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APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 6

JOSEPH CARROLL, *et al.*,
Petitioners

v.

THE PRESIDENT AND COMMISSIONERS OF BALTIMORE COUNTY AND STATE OF MARYLAND, *et al.*,
Respondents

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

FILED OCTOBER 5, 1967
CERTIORARI GRANTED MARCH 4, 1968

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 689

JOSEPH CARROLL, *et al.*,
Petitioners

v.

THE PRESIDENT AND COMMISSIONERS OF BALTIMORE COUNTY AND STATE OF MARYLAND, *et al.*,
Respondents

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

INDEX

Certified Copy of Docket Entries	1
Petition for Temporary and Permanent Injunction Affidavit and Order	4
Writ of Injunction for Joseph Carroll and Service Return	8
Answer to Petition for Temporary and Permanent Injunction, Affidavit and Certificate of Service	9
Motion to Amend Bill of Complaint, Amended Bill of Complaint for Injunctive or other Relief	11

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Opinion 15
Order of Court 19
Notice of Appeal and Certificate of Service 20
Order for Appeal and Certificate of Service 20
Motion to Shorten Time for Transmission of Record, Affidavit, Certification of Service and Unsigned Order of Court 21
Motion to Lengthen Time for Transmission of the Record, Certification of Service and Order 23
Court Testimony (Pages 1-92 & i page) 25
Transcript of Tape Recording (Pages 1-64) 80
Mandate from Court of Appeals of Maryland 113
Opinion of Court of Appeals of Maryland (Pages 1-11) 114
Clerk's Certification as to Record 125

[1]

[Caption Omitted in Printing]

DOCKET ENTRIES

1966 Aug. 7 - Titling, Petition for Temporary and Permanent Injunction, Affidavit and Order of Court filed.

1966, Aug. 7 - Writ of Injunction Issued - Service Returns:

"Served upon Joseph Carroll, of Baltimore County and State of Maryland, by laying in his hands on this 7th day of August, 1966, a copy of Writ of Injunction, together with a copy of the Titling, Petition, Affidavit and Order of Court. 18:10 hrs. "/s/ 1st Sgt. E. D. McGee 8/7/66. 18:10 hrs."

"Served upon Richard Norton, whose address is unknown and temporarily in Somerset or Worcester Counties of the State of Maryland, by Laying in his hands on this 7th day of August, 1966, a copy of Writ of Injunction, together with a copy of the Titling, Petition, Affidavit and Order of Court. Accepted by Joseph Carroll. /s/ 1st Sgt. E. D. McGee 8/7/66 18:10 hrs."

"Served upon J. B. Stoner, whose address is unknown and temporarily in Somerset or Worcester Counties of the State of Maryland, by laying in his hands on this 7th day of August, 1966, a copy of Writ of Injunction, together with a copy of the Titling, Petition, affidavit and Order of Court. Accepted by Mr. Connie Lynch. /s/ C. A. Kirkpatrick I Sgt., Md. State Police 610 PM 8/7/66."

"Served upon Connie Lynch, whose address is unknown and temporarily in Somerset or Worcester Counties of the State of Maryland, by laying in his hands on this 7th day of Aug-

ust, 1966, a copy of Writ of Injunction, together with a copy of the Titling, Petition, Affidavit and Order of Court. /s/ C. A. Kirkpatrick I Sgt. Md. State Police 8/7/66 6:10 PM"

"Served upon Robert Lyons, whose address is unknown and temporarily in Somerset or Worcester Counties of the State of Maryland, by laying in his hands on this 7th day of August, 1966, a copy of Writ of Injunction, together with a copy of the Titling, Petition, Affidavit and Order of Court. Accepted by Mr. Joseph Carroll /s/ C. A. Kirkpatrick I Sgt., Md. State Police 6:10 PM 8/7/66."

[2]

"Served upon William Brailsford, whose address is unknown and temporarily in Somerset or Worcester Counties of the State of Maryland, by laying in his hands on this 7th day of Aug- together with a copy of the Titling, Petition, with a copy of the Titling, Petition, Affidavit and Order of Court. /s/ C. A. Kirkpatrick I Sgt., Md. State Police 8/7/66 6:10 PM."

"Served upon National States Rights Party, whose address is unknown, by laying in the hands of Joseph Carroll, on this 7th day of August, 1966, a copy of Writ of Injunction, together with a copy of the Titling, Petition, Affidavit and Order of Court. Accepted by Joseph Carroll. /s/ 1st Sgt. E. D. McGee - 8/7/66 18:10 hrs."

1966, Aug. 15 - Order to enter appearance of Lionel Bennett as attorney for County Commissioners of Somerset County, filed.

1966, Aug. 16 - Answer to Petition for Temporary and Permanent Injunction, Affidavit and Certificate of Service, filed.

1966, Aug. 17 - Hearing held:

1966, Aug. 17 - Enter appearance of Alexander G. Jones as attorney for Town of Princess Anne and Three Members and Lionel Bennett as Attorney for Board of County Commissioners.

1966, Aug. 17 - Motion to Amend Bill of Complaint and Amended Bill of Complaint for Injunctive or other relief filed, on behalf of Board of County Commissioners.

1966, Aug. 17 - Motion granted.

1966, Aug. 17 - Plaintiffs' Memorandum filed.

1966, Aug. 17 - Defendants' Memorandum filed.

1966, Aug. 17 - Enter appearance of William Harris Zinman and Garrett Power as attorneys for Defendants.

1966, Aug. 29 - Opinion of Court filed.

1966, Aug. 29 - Copy of Opinion mailed to Jones & Jones and Lionel Bennett, attorneys for plaintiffs, and William Harris Zinman, Attorney for Defendants.

1966, Aug. 30 - Order of Court filed.

1966, Sept. 9 - Notice of Appeal to the Court of Appeals of Maryland and Certificate of Service, filed.

1966, Sept. 26 - Order for Appeal and Certification of Service, Motion to Shorten Time for Transmission of Record, Affidavit, Certification of Service and Unsigned Order of Court, filed.

1966, Sept. 28 - Attorneys for Plaintiffs and Defendants notified that Record is ready for Transmission to the Court of Appeals of Maryland and is ready for their inspection.

1966, Oct. 10 - Motion to Lengthen Time for Transmission of the Record, Certification of Service and Order of Court extending time for transmission of Record to the 11th day of November, 1966.

1966, Oct. 28 - Testimony filed.

1966, Oct. 28 - Transcript of Tape Recording filed.

1966, Oct. 28 - Exhibit 1 consisting of Tape recording and film, filed.

1966, Oct. 31 - Attorneys for plaintiffs and defendants notified that Record is ready for transmission to the Court of Appeals of Maryland and is ready for their inspection.

1966, Nov. 10 - Transcript of Record mailed to the Court of Appeals of Maryland Annapolis, Maryland, by certified mail - return receipt requested.

1967, Jul. 10 - Transcript of Record returned from Court of Appeals of Maryland.

1967, Jul. 10 - Mandate from the Court of Appeals of Maryland containing following Docket Entries filed:

> June 7, 1967: Temporary order of August 7, 1966 affirmed. Interlocutory order of August 30, 1966 reversed. Each party to pay their respective costs. Opinion by Finan, J.

[5]

[Caption Omitted in Printing]

PETITION FOR TEMPORARY AND PERMANENT INJUNCTION

The President and Commissioners of Princess Anne, a municipal corporation, the County Commissioners of Somerset County, a corporation, and Norris Dashiell, Mahlon D. Price and James E. Lauchner, of Somerset County and State of Maryland, by Edgar A. Jones, their special attorney, respectfully represent:

1. That the County Commissioners of Somerset County is a corporation duly organized under the laws of the State of Maryland, The President and Commissioners of Princess Anne, is a municipal corporation of the State of Maryland, both of said corporations having their principal offices in Princess Anne, Somerset County, Maryland, and that the complainants,

Norris Dashiell, Mahlon D. Price and James E. Lauchner, are residents of the State of Maryland.

2. That the defendant, Joseph Carroll, is a resident of Baltimore County and State of Maryland, and the addresses of the other defendants, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford, and the National States Rights Party are unknown to your petitioners but they are presently in Somerset or Wicomico Counties of the State of Maryland.

3. That on or about 7:00 or 7:30 P. M. on the night of August 6, 1966 in front of the Court House in Princess Anne the said defendants, Connie Lynch and Richard Norton in the presence of the other individual defendants and representing themselves

[6]

as members of the National States Rights Party, hereinafter called defendants installed a loud speaker in front of the said Court House and for more than one hour did harangue a crowd of some one hundred and fifty to two hundred persons in such a manner as to arouse intense racial feeling, using abusive and derrogatory language in an apparent effort to stir up racial strife; the said Connie Lynch and Richard Norton in emotional talks urged the white populace to disperse and drive out the negro populace and in a circuitous way threatened the extinction of the Negro race and at one point said Richard Norton suggested in essence that they might go back to Africa in boxes. It was apparent from the tone of the speakers and of their companions that their intent was to cause ill feeling between the races and if possible to stir up actual conflict. On August 6, 1966 the orators ited the community and anybody else who was i ested to come to a meeting on August 7, 1966 in Princess Anne, Maryland, at which time they would really tell their audience why the negroes, called "niggers" all through their speeches should be

driven out. The loud speakers were turned up to such a degree that the voices of the speakers carried for several blocks disturbing the peace and comfort of the citizens within range of their voices. The allegations of this petition can be substantiated by tape recordings of the speeches made by the said Connie Lynch and Richard Norton on the night of August 6, 1966.

Your petitioners allege and believe that if the defendants are permitted to carry on these harangues and incendiary rallies that the whole of Somerset County will be in danger of riots to the great injury of the citizens of Somerset County and that irreparable harm and damage and injury will be done to the plaintiffs and the citizens and their properties of Somerset County unless the acts and conduct of the defendants above complained of are enjoined.

Wherefor, plaintiffs pray that the defendants be permanently enjoined from holding rallies or meetings in Somerset County which will tend to disturb and endanger the citizens of the County and to enjoin the said defendants from using and operating or causing to be operated within the County any devices or apparatus

[7]

for the application of the human voice or records from any radio, phonograph or other sound making or producing device thereby disturbing the tranquility of the populace of the County.

And the plaintiffs further pray that during the pendency of this action that a temporary injunction issue to enjoin and restrain the defendants from the acts and conduct aforesaid.

Attorney for Plaintiffs

[Jurat omitted in Printing]

ORDER

Upon reading and filing the verified complaint of the plaintiffs in this action, and the affidavit of Norris Dashiell, one of the plaintiffs, and from the action of the defendants in front of the Court House and on the Court House lawn on the night of August 6, 1966 and the inflamatory remarks made by at least two of the aforesaid defendants and the disturbance of the people and the amplification of their voices and of the music played on the said amplifier, it appears to the satisfaction of the court that this is a proper case for granting a temporary restraining order and unless the temporary restraining order prayed for be granted great injury will result to the plaintiffs and the citizens of Somerset County before the matter can be heard on notice; now therefore,

[8]

It is hereby ORDERED that the defendants be and appear before this court, at the hour of 10 o'clock A. M., on 17th day of August, 1966, then and there to show cause, if any they have, why, they, and their agents, servants, employees, and attorneys, should not be permanently enjoined and restrained from holding rallies, meetings and the use of amplifying machines that will tend to excite racial ill will, riots and disturbances.

It is further ordered that pending the hearing on this order to show cause that defendants, their agents, servants, employees, and attorneys, be and they are, enjoined and restrained from holding rallies, gatherings or meetings and the use of amplified apparatus any where in Somerset County that will in any manner excite to riot or any other illegal act or acts.

It is further ORDERED that a copy of the complaint and the affidavit of Norris Dashiell be served

on the defendants not later than the 7th day of August, 1966.

Order Dated: Aug. 7, 1966

/s/ E. McMaster Dyer
Judge

[9]

WRIT OF INJUNCTION

STATE OF MARYLAND

SOMERSET COUNTY, TO WIT:

TO Joseph Carroll, of Baltimore County and State of Maryland, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons and William Brailsford, whose addresses are unknown but temporarily in Somerset or Worcester Counties of the State of Maryland and National States Rights Party, whose address is unknown.

GREETING:

We command and strictly enjoin and prohibit you the said Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford and National States Rights Party from holding rallies or meetings in Somerset County which will tend to disturb and endanger the citizens of the County and to enjoin you, the said defendants, from using and operating or causing to be operated within the County any devices or apparatus for the application of the human voice or records from any radio, phonograph or other sound making or producing device thereby disturbing the tranquility of the populace of the County, until the matter can be heard and determined in equity, or for a period of ten days from the date hereof.

Hereof, fail not, as you will act to the contrary at your peril.

Witness the Honorable E. McMaster Duer, Chief Judge of the First Judicial Circuit Court of Maryland, the 11th day of April, 1966.

Issued the 7th day of August, 1966.

/s/ Illegible
Clerk

[10]

[Service returns upon other named defendants omitted in printing.]

SERVICE RETURN:

Served upon Joseph Carroll, of Baltimore County and State of Maryland, by laying in his hands on this 7th day of August, 1966, together with a copy of the Titling, Petition, Affidavit and Order of Court.

/s/ E. D. McGee

[24]

[Caption omitted in printing]

ANSWER TO PETITION FOR TEMPORARY AND PERMANENT INJUNCTION

Now comes Joseph J. Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford and the National States Rights Party, by their Attorneys, William H. Zinman, and Garrett Power, and respectfully answer the Petition as follows:

1. That the Defendants admit all of the allegations contained in paragraph one.

2. That the Defendants neither admit nor deny all of the allegations contained in paragraph two.

3. That the Defendants deny all of the allegations contained in paragraph three.

4, That the Petitioners allege, by way of affirmative defense, that the Court does not have jurisdiction over the subject matter or the parties in this case.

WHEREFORE, the Defendants respectfully request that the Court grant unto them the following relief:

A. That the relief sought by the Petitioners by way of either permanent or temporary injunction be denied.

[25]

B. That the Order passed by this Court under date of August 7, 1966, be rescinded.

C. That the Petition be dismissed with costs assessed against the Petitioners.

D. That the Defendants be granted such other and further relief as their cause may seem to indicate.

/s/ Joseph Carroll
Defendant, personally
and as agent for all of
the other Defendants

[26]

[Jurat omitted in Printing]

[27]

[Caption omitted in Printing]

MOTION TO AMEND BILL OF COMPLAINT

The plaintiffs move for leave to amend the bill of complaint herein and to file the annexed amended bill of complaint.

Alexander G. Jones
Attorney for the President and Commissioners of Princess Anne

Lionel Bennett
County Attorney for Somerset County

Edgar A. Jones
Special Attorney for Plaintiffs

Dated: August 17, 1966

[28]

[Caption omitted in Printing]

AMENDED BILL OF COMPLAINT FOR INJUNCTIVE OF OTHER RELIEF

The plaintiffs, the President and Commissioners of Princess Anne, a municipal corporation, the County Commissioners of Somerset County, a municipal corporation, and Norris Dashiell, Mahlon D. Price and James E. Lauchner, by their attorneys, Alexander G. Jones, Lionel Bennett, and Edgar A. Jones, allege:

1. The President and Commissioners of Princess Anne is a municipal corporation duly chartered under the laws of the State of Maryland having and exercising such powers, functions and duties as are granted to or imposed upon it under and by virtue of the Constitution and the laws of the State of Maryland.

2. The County Commissioners of Somerset County is a municipal corporation duly chartered under the laws of the State of Maryland having and exercising such powers, functions and duties as are granted to or imposed upon it under and by virtue of the Constitution and the Laws of the State of Maryland.

3. On information and belief, the plaintiffs aver that the defendants, Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, and William Brailsford, are members either of the National States Rights Party or the Ku Klux Klan, and that the said defendants are and have termed themselves as "racists" and have advocated the use of violence, terror, or threats to prevent forceably the implementation of existing legislation in the civil

[29]

rights area and the civil rights movement generally; that the National States Rights Party is an unincorporated association of individuals whose chief purpose or aim is identical to those set forth above with respect to the individual defendants.

4. That on Saturday, August 6, 1966, the defendants and each of them conducted and otherwise participated in a rally at the County Court House in the Town of Princess Anne, Somerset County, Maryland, at which speeches and harangues were made by the defendants, Joseph Carroll, Richard Norton, and Connie Lynch. The large number of people assembled at the rally were exhorted and harangued by the use of abusive, inflammatory and profane language to carry out the racist theories of the defendants by the use of force and violence; that the probable and natural consequences of such exhortations is to incite the members of the audience to riot and to turn an otherwise peaceful gathering of the citizens of Somerset County into a riotous or tumultuous assemblage of people, which would in turn result in both real and personal property situated in Somerset County being injured,

destroyed and taken away; that the audience was advised by the defendants to return for a rally to be held on Sunday, August 7, 1966, at the same time and place, at which time it was promised the violent tempo of the speeches would be increased.

5. The conduct and announced purpose of the defendants at the above stated times and places were the same as that of the defendants on July 25th and 27th, 1966 in the City of Baltimore, which conduct actually did result in violence which required the intervention of large numbers of police to prevent said violence from becoming a riot; that the conduct of the defendants in Baltimore City has been restrained by the Circuit Court of Baltimore City in an action entitled "Mayor and City Council of Baltimore, et al. vs Joseph John Carroll, et al.".

6. That unless enjoined, the defendants have threatened to hold similar rallies in Somerset County and to make similar

[30]

inflammatory and abusive speeches; that on the basis of what has occurred in the City of Baltimore on July 25th and 27th, 1966, and in Princess Anne on August 6, 1966, such rallies and speeches will cause further violence, rioting and civil disturbance leading to possible loss of life and irreparable damage to property.

7. That the County Commissioners for Somerset County, and the President and Commissioners of Princess Anne may become liable for damage to any property injured or destroyed by any riotous or tumultuous assemblage of people.

8. That the police force of the Town of Princess Anne and the Sheriff's force of deputies of Somerset County are insufficient to cope with any riotous or tumultuous gathering involving any large number of people and, unless the acts of the defendants com-

plained of herein are restrained, will be unable to preserve the public peace.

Wherefore, plaintiffs pray:

1. That the defendants individually and in their respective official capacities, or any other persons who have knowledge of or to whom notice of this injunction comes, and who is associated with or affiliated with the defendants or the National States Rights Party, be permanently enjoined and restrained from holding any further rallies, demonstrations or assemblies at any public or private place or street in Somerset County.

2. That the Court will, pending final hearing and determination of the issues herein, issue an ex parte temporary injunction enjoining and restraining the defendants and any other person associated with or affiliated with the defendants or the National States Rights Party who have knowledge or to whom notice of this injunction shall come from doing any of the acts prayed to be permanently enjoined and restrained as above set forth.

[31]

3. That the plaintiffs have such other and further relief as their case may require.

Alexander G. Jones
Attorney for the President and Commissioners of Princess Anne

Lionel Bennett
County Attorney for Somerset County

Edgar A. Jones
Special Attorney for Plaintiffs

[32]

[Caption omitted in Printing]

OPINION

The Commissioners of Princess Anne and the County Commissioners of Somerset County seek, by the Bill of Complaint filed in this cause, to restrain the named individual defendants as well as the National States Rights Party from holding rallies or meetings in Somerset County and to further restrain them from using any device to amplify the human voice on records or otherwise.

Princess Anne, the county seat of Somerset County, has quite a high percentage of Negro residents and is also the site of Maryland State College, a predominately Negro College. For time immemorial, the relationship between the white and negro races in this county seat as well as the county itself, has been that of mutual respect and deference with perhaps isolated incidents occuring between the individual members of the different races, but no wide-spread disorder has enveloped the county or city, until on or about 1964.

During the fall of that year, what we now refer to as demonstrations (formally riots) became so violent that it was doubted by many the situation could be controlled without the aid and assistance of the National Guard. The fears, anxiety and apprehension of the populace were well founded, for the commander of the State Police at the scene was injured so badly that he has not yet recovered and the prognosis is not certain as to his eventual full recovery. If this riot had become unmanageable; disaster and

[33]

and castrophy would have been the inevitable result. Since the date of those riots, an uneasy truce seems to be the status.

One witness, a town commissioner, whom we believe to be in a position to know, feels that the scales may be tipped at any moment and another series of tragic events may follow. He states as a reason for this that on at least two occasions, perhaps more, small crowds or gangs have either attacked or have set upon members of the opposite race and had it not been for the alert and firm action of the police, more difficult situations could have arisen. We know this to be a true situation for participants in those fracases have been tried in this very Court. So it can be readily ascertained that in the area of race relationships, any movement to arouse anger and passions could easily destroy the peace and tranquility of this community without much effort.

With this circumstance existing, on August 6, 1966, the National States Rights Party decided to have a meeting with apparent purpose of informing the public in this vicinity of the purpose and tenets of the party and without any known prior advanced billing, held a meeting on the Court House steps, beginning at approximately 7:00 p.m.

The State Police were informed that this gathering was to be held and being fearful that some disorder was likely to be the result, congregated all available Troopers not otherwise on duty, close at hand without their presence being known to the participants, both speakers and listeners, and as near as we can recollect, we think that about sixty officers were located in a building of the State Roads Commission not too far from the Court House.

After some inquiry concerning the right to hold a meeting on the Court House steps, the speakers were advised there was no local ordinance against their contemplated activity. They then placed several loud speakers at advantageous points and began playing records, most of which were not understandable, but the word "Nigger" could be heard on a number of occasions. The loud and raucous noises attracted perhaps

some two hundred people with about twenty-five percent Negro. At the conclusion of the records, to attract an audience, the speakers began their harangue.

[4]

It is difficult to conceive of more vituperative and insulting statements in the so called speeches. We have got to assume that the National States Rights Party stood for what the speakers on this evening stated because at one point they stated that this party "is the only white man's political party in America" and for "resending of the Niggers back to Africa, carrying out the purpose of our forefathers that wanted it written in the constitution to stop these Kike-Hating Jews from becoming citizens". At one point a speaker states "I'm going to tell you niggers out there now the best thing you can do is start taking reservations for Africa for you're finished. We don't need you. You're off, you're dead. Get ready to leave this country. Get ready to leave this country. You can leave a lot of ways — you can leave on boat, you can leave running, you can bicycle, or you can leave in a box. This is a white man's country. Princess Anne is a white man's town. This is a white man's country." The statements just quoted set the theme for the entire dialogue and need not be further detailed.

Any fair interpretation of the stated principals of this "political party" is that it advocates the expulsion of two races from citizenship in this country, if not their extermination. The holocaust of the last World War is too vivid in the memory of the Court to be persuaded that acts and statements motivated by the enunciated principals should be permitted even under the guise of "free speech". It is clearly our understanding a person or a group of persons have an absolute right to speak their convictions, expouse any cause they desire, unless by so doing there is a clear and present danger of disorder, rioting or a breach of the peace.

Schenck v. United States, (1918), 249 U.S. 47, 63 L. ED. 470; Cantwell v. Connecticut (1940) 310 U.S. 296, 84 L. ED. 2d 471; Cox v. Louisiana (1965) 379 U.S. 536, 13 L. ED. 2d 471; Cox v. Louisiana (1965) 379 U.S. 559, 13 L. ED. 2d 487; Edwards v. South Carolina (1963), 372 U.S. 229, 9 L. Ed. 697.

We are mindful of the principals set out in Termineillo v. City of Chicago 337 U.S. 1 (1949); Wright v. Georgia 373 U.S. 284 (1963) Edwards v. South Carolina 372 U.S. 229 (1963), but we cannot find in this incident that the speeches of Lynch, Carroll, and Norton advocating racial violence and unrest are unlawful in the first instance.

[35]

On the other hand, we feel the "free speech" clause of the Constitution does not permit an individual or a group of individuals to publicly use abusive and insulting language to any race in a public place, with members of that race present and suggest they leave their country and if they did not do so, their lives would be in danger. In addition it is our belief there was a "clear and present danger" of a riot had the speakers been permitted to return. In fact, disorder would have been the inevitable result.

An Order will be signed extending the injunction for a definite period of time from the date thereof.

/s/ William W. Travers
Judge

/s/ E. McMaster Duer
Judge

[36]

[Caption omitted in Printing]

ORDER

The above entitled cause having come on for hearing, testimony having been taken, argument of counsel having been heard, and a written Opinion having been rendered by the Court, it is, by the Circuit Court for Somerset County this 30th day of August, 1966,

ORDERED

That an Interlocutory Injunction be and it is hereby granted for a period of ten (10) months, as follows:

(a) Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, and William Brailsford, be and they are hereby each enjoined from holding, sponsoring, or participating in holding or sponsoring, or speaking at any rallies, demonstrations, harangues, or public assemblies at, in, or on any public place, street, or park in Somerset County, or in any place in Somerset County to which the public is invited, or is open to the public;

(b) The National States Rights Party, be and it is hereby enjoined from holding, sponsoring, or participating in or holding or sponsoring any rallies, demonstrations, harangues, or public assemblies at, in, or on any public place, street, or park in Somerset County, or any place in Somerset County to which the public is invited, or which is open to the public, at which racial or religious epithets are used, or at which is used other language calculated, intended, or which may reasonably be expected to have the effect of inciting or advocating violence, rioting, public disorder, or

[37]

breaches of the peace; and it is

FURTHER ORDERED, That this Court retains jurisdiction over the cause and the said parties; to hear

and pass on such further proceedings as may come before this Court upon proper petition or motion.

AND IT IS HEREBY FURTHER ORDERED, That all costs of these proceedings be paid by the Defendants.

/s/ E. McMaster Duer
Judge

/s/ William W. Travers
Judge

[38]

[Caption omitted in Printing]

NOTICE OF APPEAL

Now comes Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford, and the National States Rights Party, by their Attorney, William H. Zinman, and hereby respectfullyy requests the Court to note the Appeal from the decision in the above entitled case to the Court of Appeals of Maryland.

/s/ William H. Zinman
500 Equitable Building
Batlimore, Maryland 21202

[Certificate of Service omitted in Printing]

[39]

[Caption omitted in Printing]

ORDER FOR APPEAL

Mr. Clerk:

Now comes Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons and William Brailsford and the National States Rights Party, by their Attorney, William H. Zinman, and request that an Appeal be entered to the Court of Appeals of Mary-

land from the Decree, Order and Opinion rendered on August 30, 1966.

/s/ William H. Zinman
500 Equitable Building
Baltimore, Maryland 21202
SA 7-6151
Attorney for Defendants

[Certificate of Service omitted in Printing]

[40]

[Caption omitted in Printing]

MOTION TO SHORTEN TIME FOR TRANSMISSION OF RECORD

Now comes Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford and the National States Rights Party, by their Attorney, William H. Zinman, and moves pursuant to Maryland Rule 825 B, that the time for transmittal of the record in this action to the Court of Appeals, be shortened to expire after business hours on September 28, 1966. The grounds of the Motion are as follows:

1. By Decree dated August 30, 1966, this Court granted what it referred to as a ten (10) month interlocutory Injunction prohibiting Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons and William Brailsford from holding, sponsoring, or participating in holding or sponsoring, or speaking at any rallies, demonstrations, harangues, or public assemblies at, in, or on any public place, street, or park in Somerset County, or in any place in Somerset County to which the public is invited, or is open to the public. And the Court in the same order referred to as an Interlocutory Injunction for the same period of time further enjoined the National States Rights Party

from holding, sponsoring, or participating in or holding or sponsoring any rallies, demonstrations, harangues or public assemblies at, in, or on any public place, street, or park in Somerset County, or any place in Somerset County to which the public is invited, or which is open to the public, at which racial or religious epithets are used, or at which is used other language calculated, intended, or which may reasonably be expected to have the effect of inciting or advocating violence, rioting, public disorder or breaches of the peace; and that this Court further Ordered, that it retains jurisdiction over the cause and the said parties: to hear and pass on such further proceedings as may come before this Court upon proper petition or motion; and that it is further Ordered, that the Defendants pay all of the costs of the proceedings.

2. That the Defendants filed a Notice of Appeal received by the Court on September 9, 1966.

3. That all of the Defendants vigorously contended at the trial, contend now, and shall contend on Appeal, that the aforementioned Order of Court constitutes patent violation of their First Amendment Rights under the facts of this case and the laws of the United States; and that everyday that this Interlocutory Injunction remains in force and effect, the First Amendment Rights of your Petitioners shall continue to be restricted.

4. That the testimony at the trial was transcribed daily and the record on Appeal can be assembled within one (1) week. If transmitted in the time normally provided by the Rules, the case will be docketed in the Court of Appeals as of the next term.

4. Since the movants contend that under the law they have the same rights of speech and assembly as all other citizens and are presently enjoined from any expression of the same in

[42]

Somerset County for a period of ten (10) months, it is extremely important for these movants that the issues on Appeal be decided as quickly as possible.

/s/ Richard Norton
Defendant, personally and as agent for all of the other Defendants

/s/ William H. Zinman
500 Equitable Building
Baltimore, Maryland 21202
Attorney for Defendants

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[Certificate of Service omitted in Printing]

[43]

[Caption omitted in Printing]

ORDER

IT IS ORDERED, by the Court, on this__day of ____, 1966, that the time for transmitting the record on Appeal in the instant case to the Court of Appeals of Maryland, is shortened so that the record shall be transmitted to the Court of Appeals on or before the 28th of September, 1966.

JUDGE

[44]

[Caption omitted in Printing]

MOTION TO LENGTHEN TIME FOR TRANSMISSION OF THE RECORD

Now comes Joseph Carroll, et al, by his Attorney, William H. Zinman, and pursuant to Rule 825 B, moves that the time for transmission of the record to the Court of Appeals, be extended for thirty (30) days.

1. That counsel representing the parties are physically over a hundred miles apart and that efforts had been made by all counsel to enter into an agreed Stipulation of Facts in substitution for the original transcript of the proceedings below.

2. That differences arose concerning the content of the aforesaid Stipulation as a result of which all parties agreed to an extension of time for the purpose of disposing of the matter.

WHEREFORE, all of the parties respectively request a thirty (30) day extension of time for transmission of the records to the Court of Appeals.

And such other and further relief as their cause may seem to indicate.

/s/ William H. Zinman
500 Equitable Building
Baltimore, Maryland 21202
SA 7-6151

[45]

[Certificate of Service omitted in Printing]

[46]

[Caption omitted in Printing]

ORDER

IT IS ORDERED by the Court on this 10th day of October, 1966, that the time for transmitting the record on Appeal in the instant case to the Court of Appeals of Maryland, is extended so that the record shall be transmitted to the Court of Appeals on or before the 11th day of November, 1966.

/s/ E. McMaster Duer
Judge

[47]

Princess Anne, Maryland
August 17, 1966.

The above-entitled matter came on for hearing before Honorable E. McMASTER DUER and Honorable WILLIAM W. TRAVERS, beginning at 10:40 a. m., e.d.t.

APPEARANCES:

For the President and Commissioners of Princess Anne:

ALEXANDER G. JONES, Esquire.

[Tr. 2] For the County Commissioners of Somerset County:

LIONEL BENNETT, Esquire.

For Joseph Carroll, Richard Norton, William Brailsford, J. B. Stoner, and National States Rights Party:

WILLIAM H. ZINMAN, Esquire, and GARRETT POWER, Esquire.

IN ATTENDANCE:

EDGAR A. JONES, Esquire, Special Attorney for plaintiffs.

[Tr. 3] PROCEEDINGS

MR. ALEXANDER JONES: Enter my appearance. I don't think it is in the record, for the Commissioners of Princess Anne and —

THE COURT: Enter the appearance of Mr. Bennett for the Board of County Commissioners.

MR. ALEXANDER JONES: — Mr. Price, Mr. Lauchner, and Mr. Dashiell.

MR. EDGAR JONES: The Court understands I filed especially —

THE COURT: You filed in the absence of both those other gentlemen.

MR. BENNETT: May it please the Court, at this time the Board of County Commissioners wishes to file a motion to amend the bill of complaint which is not concurred in by the other plaintiff. Also at this time I would like to file petition —

THE COURT: What does your amendment contain?

MR. BENNETT: It contains essentially the same facts in the original bill except the information in paragraph seven is additional material and paragraph eight is additional material.

THE COURT: You are amending to the extent, if I may ask you, to the extent of setting forth the liability of the County Commissioners in the event of any riotious and [Tr. 4] tumultuous assemblage of people?

MR. BENNETT: That is part of it.

THE COURT: That the Sheriff force of the town of Princess Anne and Somerset County are insufficient to cope with a riotous situation.

MR. BENNETT: That is based upon the provision of Article 82, section —

THE COURT: Do I hear any objection on the part of counsel concerning the amendment and that is the only change?

MR. ZINMAN: As to the liability, Your Honor?

THE COURT: Yes, sir.

MR. ZINMAN: Your Honor, the only thing, I formally object, if the Court please, on the ground I believe that this is an argument rather than setting forth the substance of the bill itself.

The relief sought is an injunction based upon certain characteristic kind of activity in which the defendants are allegedly engaged and I don't think the fact that the county is or is not liable would constitute a factor in assisting the Court in making this determination.

Really, I object on the basis of its being irrelevant to the issue of what the Court has before it.

THE COURT: You mean to tell me that it wouldn't have some part to a hearing before this Court that someone [Tr. 5] other than the County Commissioners could make them liable wouldn't be relevant in damage liability and damages wouldn't have any part in it?

MR. ZINMAN: I think that, Your Honor, would be secondary to the basic issues of whether or not the

facts concerning breach of peace or other allegations contained in the bill become involved. Assuming property damage, there would be innumerable damage to a number of it — if you were to spread that, you could almost have anybody within the ambit of alleged danger making the same allegation and seeking the same relief on the same basis.

I don't want to get into the argument. I do feel for that reason this portion, anyway, is immaterial and I would just object formally to its inclusion at this time.

MR. BENNETT: Do you want to hear —

THE COURT: No, sir. Objection is overruled and amended bill of complaint is to be considered filed.

Now, gentlemen, the clerk just brought to our attention whether or not you have formally entered your appearance in this matter. You may do so.

MR. ZINMAN: Do we sign another appearance?

THE COURT: No, indeed. What is your full name, sir?

MR. ZINMAN: William Harris Zinman. Z-i-n-m-a-n. And Garrett Power.

[Tr. 6] THE COURT: Enter those gentlemen and enter their appearance.

Gentlemen, you may proceed.

MR. JONES: This proceeding is based upon a petition filed by the Town Commissioners of Princess Anne, the County Commissioners of Somerset County, Mr. Price, Mr. James Lauchner, and Mr. Norris Dashiell who also happen to be the Town Commissioners.

The petition sought to restrain the defendants individually and collectively from making certain speeches in this county and in this town which tended to incite racial and religious ill will.

This Court did on August 7th grant the temporary injunction giving — achieving that purpose and giving the defendants until today to in effect show cause why the injunction should not be continued.

The theory, the basic premise of this case is this area, because of events which occurred in recent history is subject to racial tension. For a variety of

reasons — that speeches and conduct such as were exhibited by the defendants in Princess Anne on August 6th tend to inflame the situation and to bring into confrontation extremists from two divergent opposing points of view which may as has happened in the past in other areas of the country and state lead to riot. A riot, of course, which would damage property in this [Tr. 7] area and which could lead to personal injury or perhaps the death of persons who were not involved in the riot as participants.

The Court, I believe, can take judicial notice of the fact Princess Anne is a small town with a small police force which in general consists of one patrolman on duty at any one time.

The county police force, organization, as such, other than that, consists of a police department in Crisfield only slightly larger and I understand two men on duty at any given time. And the Sheriff's office, Isaac Dorsey and two deputies.

Our contention is this force, competent as they may be, is insufficient to control a riot which would inevitably result from circumstances.

The other resource is the Maryland State Police, or beyond that, the Maryland National Guard which has, as the Court knows, been called to duty in Cambridge and other areas of this state.

We will introduce witnesses who will testify as to the events which occurred here on August 6th, their judgment in official capacity of what might occur should these demonstrations, rallies, and speeches be allowed to continue, the effect upon this community and upon this county. These witnesses are present in court and are prepared to [Tr. 8] testify.

We seek to have the injunction continued for the reasons which I have outlined. Thank you.

THE COURT: Call a witness.

MR. JONES: Colonel Davidson.

THE COURT: Would you gentlemen like to make a statement?

MR. ZINMAN: May it please the Court, I would like to make a brief statement on behalf of the defendants.

First, by way of explanation, I have been requested to make this statement by the defendants and also state our position to some extent.

Mr. Power, who is a Professor at the University of Maryland Law School, and I have been assigned to the defense of this case by the American Civil Liberties Union at the request of the defendants and have consented to take the case on that basis.

I would like to make it crystal clear right at the outset of the case that both Mr. Power and myself legally and personally are here defending only one right and one right alone and that is the right of freedom of speech and freedom of expression of these defendants. This is consistent not only with personal views but consistent generally with the object of the American Civil Liberties Union.

And, without going into the law which we hope [Tr. 9] later to cite as applicable, suffice it to say this, We shall be prepared to produce evidence which we hope to back up our position.

I would like to make one more request of the Court. Under the Maryland Rules of Procedure, we would appreciate it if the witnesses in this case would be excluded.

THE COURT: We think you are entitled to that.

Now, you will call over your witnesses, you and Mr. Bennett call over your lists of witnesses and witnesses stand as you are called.

MR. JONES: Your Honor, we will not call Mr. Price, his testimony would be cumulative.

THE COURT: You will not call Mr. Price?

MR. JONES: No, sir.

MR. ZINMAN: Your Honor, other than one of the defendants, Mr. Carroll, we do not have any other witnesses at this time. In any event, not in the courtroom. We will probably not have any witnesses other than the defendant anyway.

THE COURT: The parties are not excluded; parties are not excluded under the rule. By the same token, do not exclude Mr. Dashiell who is a party.

MR. JONES: On Mr. Price, we can reverse that. Mr. Lauchner is a party, we don't intend to call him.

THE COURT: Now, the other gentlemen named, I think, [Tr. 10] included the State Policeman and, I think, members of the Baltimore County Police Force, are excluded. Gentlemen, we will have to ask you to retire from the courtroom.

(Witnesses departed.)

THE COURT: Do you have any further statement to make?

MR. ZINMAN: No, Your Honor.

THE COURT: How about you, Mr. Power?

MR. POWER: No, sir.

THE COURT: Gentlemen, you may proceed.

MR. JONES: Colonel Davidson.

[Tr. 11] Thereupon —

GEORGE E. DAVIDSON

was called for examination by counsel for the plaintiffs and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q. Colonel, for the record, I will ask you to state your name, address, and official occupation? A. George E. Davidson, Lieutenant Colonel, Maryland State Police, Pikesville, Maryland, and the official position is Chief of Operations.

Q. Of the Maryland State Police? A. Of the Maryland State Police.

Q. How long have you been associated with the Maryland State Police? A. Since June 1, 1926.

Q. Colonel Davidson, in your official capacity which you have just recited, do you have knowledge of any racial disturbances which have occurred in Princess Anne and Somerset County within the past three years?

MR. ZINMAN: Objection, Your Honor.

THE COURT: Read us the question.

(Pending question read by reporter.)

THE COURT: Overrule the objection. You may [Tr. 12] answer it, Colonel.

BY MR. JONES:

Q. Would you briefly state the nature and circumstances of those disturbances? A. Yes, sir. On Saturday, February 22, 1964, it came to my attention that there was difficulty in Princess Anne. I was at that time at State Police Headquarters in Pikesville. Captain Randall who is Troop Commander of the eastern shore was on the scene. He kept us appraised of the difficulty.

THE COURT: We think you can testify to what racial disturbance you yourself observed down in Princess Anne.

MR. ZINMAN: I will object to the answer as being unresponsive.

THE COURT: Strike that portion of his answer out so far. If you were in Princess Anne — were you in Princess Anne?

THE WITNESS: Information came to my attention —

THE COURT: Which led you to believe that you should be here?

THE WITNESS: — that Captain Randall was injured here in racial difficulties.

MR. ZINMAN: Objection, Your Honor.

THE COURT: Sustained.

[Tr. 13] THE WITNESS: And he had to go off duty.

MR. JONES: George, limit your testimony to —

THE COURT: It is stricken, sir.

BY MR. JONES:

Q. Would you limit your testimony, Colonel, to events of which you have personal knowledge? A. Yes, sir. I came to Princess Anne on Wednesday, February 26, 1964, because of information received concerning racial demonstrations.

Q. What did you observe on that occasion? A. On that occasion I went to the State College here and conferred with Doctor Williams and County officials to discuss the matter. And it became very clear to me that the tensions were very high, that it was pretty

obvious that we were going to have trouble here that day.

MR. ZINMAN: I am going to object again to this entire line of theory; they are all conclusions not based upon observation at all.

THE COURT: We agree with that, Mr. Zinman.

MR. ZINMAN: I move to strike the answer.

THE COURT: It is stricken.

BY MR. JONES:

Q. Simply describe what you observed in and around Somerset County on February 26, 1964. A. On February 26, 1964, I came here in civilian [Tr. 14] clothes and visited the various businesses around town.

Q. What did you find? A. And in certain restaurants I found them filled with people. Tempers were very high, talk was very abusive, there were threats made of even killing people if need arose to do so.

MR. ZINMAN: I object to this answer also, Your Honor, as not being relevant to the original inquiry.

THE COURT: Why isn't it relevant?

MR. ZINMAN: Your Honor, the general remarks of this witness so far have just indicated temper was high and I feel —

THE COURT: Don't you think that tension in an area, racial tension, would be important in a situation of this kind?

MR. ZINMAN: Your Honor, if I can assume what the purpose — and I assume the question is to prove that as an ultimate fact or at least from which the Court might conclude that this is so and the generalized statement upon conclusion itself. This witness has still not testified at all to specific incidents or combination of incidents which as a laywitness had the opportunity of observing firsthand.

THE COURT: Don't you think a crowd of people in the restaurant, on the street corner, and in the street around the Courthouse who are making threats to do violence would [Tr. 15] have some part in it?

MR. ZINMAN: Well, as I said, at this point, Your Honor, violence to do what?

THE COURT: To murder — talk of killing.

MR. ZINMAN: Very well, withdraw the objection. And I —

THE COURT: Objection is withdrawn.

MR. ZINMAN: — enter a general objection which is subject to exception later on.

THE COURT: Only one point, if you can tie it in.

BY MR. JONES:

Q. Will you continue with your description of what you actually observed on this date?

MR. ZINMAN: Objection to that question as being too general. In reference to racial tension, I think it should be. In other words, not that general.

BY MR. JONES:

Q. In reference to racial tension? A. I observed the business houses crowded with people, tensions high, the street became crowded as the afternoon wore on. There was conversation about, "Do you have a gun? If you don't, I can get you one," in many sectors of the town.

Q. Were these statements made by white persons? A. Yes, they were, in the business houses and on the street and quite general. They were not isolated at all, [Tr. 16] these statements.

Q. Did a civil disturbance of any nature occur on that date? A. Sometime subsequent or during, really, this general condition which I have described the students from the college came out and promenaded down one side of the street, crossed the street, and came down the other. Then they demanded entrance frequently of Muir's Restaurant in particular. Mr. Muir stood there and refused entrance and that group would go and another would come. And that kept up for several hours.

And the groups, with the passing of time, became larger as wave after wave kept coming. And that, of course, attracted a lot of attention in the town.

Q. Were these waves of negro students? A. Very few exceptions but several hundreds of them came.

Q. Was there then a confrontation between white persons and the negro students on that date? A. At

one time the groups laid down across the street, main Route U.S. 13. It runs in front of this Courthouse. In a distance of two blocks five groups laid down across the street and blocked traffic.

They shook school busses, broke windows in cars, and there was — there were arguments with people, that's white and colored, on the street.

[Tr. 17] It became so unruly and had such a tremendous potential in my opinion of being a wholesale citywide riot.

MR. ZINMAN: Objection as to what his opinion is, Your Honor.

MR. JONES: He is qualified to give his opinion; he's in the protection business.

THE COURT: We think so too, gentlemen. He has been a member of the State Police since 1926.

BY MR. JONES:

Q. Continue, Colonel. A. The orders were given by loudspeaker to tell the people that they had to clear the street, violating the law blocking traffic and they had to clear the street, get up and get out. And they paid absolutely no attention to orders repeated many times in a loud voice and loudspeaker.

The leaders of the group were selected out and put in cars, state police cars, and taken to the jail. At the jail one of the State car tires was cut. They wouldn't get out of the cars.

Large groups from the Main Street ran across yards, across porches, across back lawns, over people's shrubbery, to the jail and completely surrounded the State Police cars and it was impossible to get the prisoners out. They blocked the entrance to the jail.

MR. ZINMAN: I dislike interrupting but I would [Tr. 18] like to object on the ground I would like the Colonel to indicate whether or not these are his specific recollections or are these based on reports as he mentioned a number of events and I would feel —

THE COURT: Ask him, Mr. Jones.

Were you present throughout this scene you have described?

THE WITNESS: I was present during the entire thing from early to late and they are specific recollections, not based on reference to any reports.

BY MR. JONES:

Q. Continue, sir. A. With the necessity of injecting as much force as was necessary at the jail, we were able to clear the State Police car and get the prisoners out by the same method we were able to clear the cars and get the prisoners in.

At that point they laid down in front of the doors, in front of the steps to make it difficult. It did make it difficult to perform the operation.

And at that point there came a barrage of everything that was imaginable, bricks, lumber, stones, glass, and even concentrated sulphuric acid thrown at the police.

I had my coat analyzed by Doctor Frimuth and the official report from him is that the holes burned in it were caused by concentrated sulphuric acid.

[Tr. 19] We eventually were able to get the group back to the entrance to the college. At that point I talked with some of the leaders from out of town that were in town that I knew from similar occasions in other parts of the state to impress the great importance of them staying on the campus.

By that time the entire town was outraged, and infuriated, and armed.

Q. Now, Colonel Davidson, on that occasion were the defendants in this proceeding — were any of them involved?

MR. ZINMAN: Objection, Your Honor. He is talking about the defendants in this case being involved in that proceeding. I will have to object.

THE COURT: What is your reason for it, if he knows? If he doesn't know — what is your reason for objecting?

MR. ZINMAN: Your Honor, the basis, as I understand it, of the testimony of the Officer, at least, as it goes back to two years prior to this incident, is generally to establish the fact of racial tension.

THE COURT: That is correct.

MR. ZINMAN: I suppose to some extent to indicate a general atmosphere in the area. I don't believe that the fact that the defendants, if he knows, were or not active at that particular time has any bearing upon that issue of tension. It is obvious from the testimony of the Colonel that [Tr. 20] there was tension here. Whether or not the defendants were involved at that time is immaterial to this line of inquiry. Later on.

THE COURT: I don't follow you on that point at all for this reason. If a man comes into a neighborhood on one occasion and finds the field fertile and comes back the second time, isn't he likely to have full knowledge of what he is doing, greater knowledge of what he is doing?

MR. ZINMAN: I think that question, Your Honor, gets into another point in this case that may be argued strongly on both sides. However, —

THE COURT: We can't put the whole case on with one witness.

MR. ZINMAN: No foundation has been laid. We don't have any evidence at this time, Your Honor, of any difficulties at all being perpetrated by these defendants and —

THE COURT: He is just introducing it, if he knows. You have to start somewhere with someone.

MR. JONES: Would you repeat the question?

(Pending question read by reporter.)

BY MR. JONES:

Q. Of your own knowledge, Colonel? A. For clarification, you mean the proceeding today?

Q. Yes, the National States Rights Party? A. I don't know.

[21] MR. ZINMAN: Withdraw the objection.

BY MR. JONES:

Q. To your knowledge, Colonel Davidson, was there any group or association or individuals present on that occasion from outside of this area who in any way incited the white residents of this area? A. Yes, I do know that there were many people from outside, some of whom I know.

MR. ZINMAN: Object.

THE COURT: We sustain that objection unless you can tie it in with these people, these defendants, or that they had knowledge of it.

MR. JONES: The point of the question is to establish the background.

THE COURT: We don't think this is proper at this time.

BY MR. JONES:

Q. Colonel Davidson, was it necessary on this occasion for the State Police to operate to disperse this distrubance which you have described? A. Yes, sir. It was.

Q. What methods were employed, sir? A. Well, the first method employed is always to get intelligence on what is possibly expected to happen. We conferred with local people, particularly the college, and based [Tr. 22] on what appeared there, we admitted that we did not have at that time sufficient manpower here to take care of what appeared to be the potential and asked them not to demonstrate that day until we could get reinforcements in here.

Q. Was that request honored? A. It was not. While we were asking them, the leaders got up out of Doctor Williams office and walked out and got a crowd together and marched into town.

We admitted we did not have the police to give the town or them the protection that they should have.

Q. Now, respond precisely to the question, what steps did the police take to quell the distrubance? A. The first thing was to alert the many areas of the state to get reinforcement in here which took many hours. But then we proceeded with the meager force which we did have to bring the thing under control.

And up in the street when they laid down in the street we ordered them out of the street and when they failed to get out of the street we arrested as many as we had manpower to do it with.

And then we were thrown at by two by four pieces of lumber, by bricks, stones, acid et cetera. We had to really charge into them and we had to employ the

use of fire engines with water to throw on them. And without that we would probably not have been able to get them out of the town.

[Tr. 23] Q. Now, Colonel Davidson, you have referred to meager manpower. You are in charge of the operation of the Maryland State Police, as I understand it? A. Yes, sir.

Q. In your opinion, in your official capacity do you have available manpower to prevent a riot should one occur in this county?

MR. ZINMAN: Object, Your Honor.

THE COURT: Objection is sustained.

MR. JONES: Your Honor, this is one of the — the town of Princess Anne, the town of Crisfield, and the County Commissioners do not have such resources and must call on the State Police.

THE COURT: We can understand that. We know one man on duty is not going to control a riot or demonstration or whichever.

MR. JONES: Testimony of this nature was permitted before Judge O'Donnell last week.

MR. ZINMAN: Objection.

MR. JONES: Judge O'Donnell allowed the testimony and relied heavily upon it to determine the protection available to Baltimore City. That is why I think it is relevant.

THE COURT: We have ruled, gentlemen. Go ahead, sir.

[Tr. 24] BY MR. JONES:

Q. Colonel Davidson, in your opinion do you believe that the racial tension in this community, meaning Princess Anne and Somerset County, is such that the events which you have described would reoccur?

MR. ZINMAN: Objection, Your Honor.

THE COURT: Overruled. He can testify to that.

BY MR. JONES:

Q. You may answer, sir. A. I very definitely do, yes, sir.

Q. What effect, if any, upon the present tension as you have mentioned would there be if a group of individuals or an organization came into this commu-

nity with the deliberate purpose of inciting racial tensions?

MR. ZINMAN: Your Honor, I will object to the question for a number of reasons. It assumes facts not in evidence and also it assumes a certain racial tension at the present time which has not been — about which no facts have been introduced in evidence.

The only testimony of this witness is that years ago there was racial tension and riot about which he speaks.

Those are the reasons for my objection, Your Honor.

THE COURT: In the answer to that same question before in different form — doesn't it amount to the same [Tr. 25] question you asked before this question? What in his opinion would happen if a group came in with a deliberate intent of doing it?

MR. JONES: Yes, sir, in view of the tension which he testified to.

THE COURT: Can you follow it up to show a deliberate intent?

MR. JONES: We are prepared to do that.

THE COURT: Admit it subject to exception, following it up.

BY MR. JONES:

Q. You may answer, sir. A. I consider it a very tense atmosphere as a result of the trouble we had two years ago and that any stirring up of people such as you know personally occurred here or attempted to occur here on August 6th would in my opinion cause a riot.

MR. ZINMAN: You are referring in your answer to the recent meeting?

THE WITNESS: Yes, I am.

MR. ZINMAN: I will object to that, Your Honor. It is not responsive and I make a motion to strike it.

THE COURT: Overruled. Go ahead.

BY MR. JONES:

Q. Colonel Davidson, in such — what were your precise words, lead to what? [Tr. 26] A. Lead to a riot.

Q. What is the official duty of the Maryland State Police Department in connection with riots within this state? A. Our official duty is to support insofar as our capability allows the local authority.

Q. What are those capabilities? A. As of today we have 867 troopers assigned to 23 counties of the state.

Q. Are all 867 available for riot duty? A. No, sir, they aren't. Approximately one-third of the force is on leave. We would never then have more than six hundred men available. Of that number there are seventy-five that are trained especially for that duty, riot duty, and they are scattered throughout the entire state.

Q. Do the police have other duties other than riot control, civil order, which involves manpower use? A. Yes, sir. We have many other duties and all other duties in our opinion are more major, more our job, than riots. We are required to do so, support local authorities always in emergencies. Their major duty is the direction and control of traffic and we have people assigned statewide in this interest. And whenever we have riots we take people off of those other important duties and leave them totally void.

As of today in this state they have killed 452 people, a total of 53 more than the same period for last year. [Tr. 27] We feel that strict enforcement and patrol statewide will curtail that very tragic figure but we were called to Cambridge, and Princess Anne and all over the state. That lasts sometimes for a week and we are unable to do our major job.

MR. JONES: That is all, sir.

THE COURT: Gentlemen, you may cross-examine.

CROSS EXAMINATION

BY MR. ZINMAN:

Q. Colonel, what is your — how do you pronounce your name? A. Davidson.

Q. Colonel Davidson, you were assigned to this area at around February 26, 1964, especially, am I to understand, as a result of the trouble about which you testified? A. I came down here as a result of prior trouble here.

Q. And you are normally assigned in the Pikesville area, is that correct? A. My headquarters is Pikesville, my assignment is statewide.

Q. So that you are assigned to an area as sort of troubleshooter. When some difficulty occurs, they dispatch you or somebody like you with the authority to act to the area to try to quell the difficulty, is that correct? A. Frankly, being Chief of Operations I dispatched [Tr. 28] myself.

Q. On that occasion you dispatched yourself here? A. Yes, sir.

Q. Now, you spoke about a difficulty. For how long, over what period of time, did this difficulty ensue, as long as a day, two days? A. Well, from our intelligence it had been brewing for a long time you might say.

Q. Let me narrow the question. For how long was it necessary for you and your special contingent of special police to remain here? A. The real flare-up occurred Saturday, February 22, 1964. On that date similar trouble — not as bad as on the Main Street — when Captain Randall was injured and taken to the hospital. Then it continued through Sunday, Monday, Tuesday and Wednesday was the day I was here and that is when we had the big trouble. Wednesday, the 26th of February.

Q. Now, since that date — that was during the period of time, was it not, when they had the civil rights demonstrations generally throughout this area, was it not? A. First time to my knowledge they had trouble in Princess Anne.

Q. You had in Cambridge in previous years? A. I was in Cambridge almost two years before I came here.

[Tr. 29] Q. That was also at the time that there was some civil rights activity throughout the state in

behalf of these organizations, isn't that correct? A. It was quite general.

Q. It was in Baltimore City, it was in Baltimore County, pretty well generalized all over? A. Yes, sir. I have been in many places in the state.

Q. Now, after that date or after that, call it a period of time, there was no further civil rights activity which required you to come back here, was there? A. I didn't come back here.

Q. This more or less ended it? A. As far as I was concerned. Captain Randall recovered and he took charge here, whatever activity police-wise — from the State Police is concerned.

Q. But you withdrew your contingent of extra men at that time and fortunately never had occasion to return here for anything similar, isn't that right? A. We had a great deal of manpower in here after the trouble and it quieted down — got them out for the most part.

Q. But you never had to come back here personally? A. I never came back personally. This is the next trip here today.

Q. And that was the only flare-up of major proportion [Tr. 30] in the civil rights area of which you have any knowledge in this particular area? A. I have knowledge only of the one I was present in.

MR. ZINMAN: No further questions.

REDIRECT EXAMINATION

BY MR. JONES:

Q. I believe you did return to Princess Anne to testify in this courtroom on charges arising out of events you described? A. Yes, sir. I stand corrected on this being the next visit. I did come back on the 26th of February for the Court hearing here. Subsequent to the trouble I came back for the court.

RECROSS EXAMINATION

BY MR. ZINMAN:

Q. That wasn't in connection with — that was in connection with duties to testify as a witness? A. In connection with the court only.

FURTHER REDIRECT EXAMINATION

BY MR. JONES:

Q. Since that occasion, in your official capacity have you received reports from official conduct of police business of racial unrest in this area?

MR. ZINMAN: Objection, Your Honor.

[Tr. 31] THE COURT: We sustain that objection.

MR. JONES: Your Honor, it tends to show this is a continuing thing if he knows of such reports in his official capacity.

THE COURT: He has already testified to that.

MR. JONES: That is all. Thank you.

THE COURT: You may step down, Colonel.

(Witness withdrew from stand.)

MR. JONES: May he be excused?

THE COURT: Does counsel have any objection?

MR. ZINMAN: No, sir.

THE COURT: Colonel, you are excused.

MR. JONES: You are free to stay, also, if you want but not in the courtroom.

[Tr. 32] Thereupon —

PAUL J. RANDALL

was called for examination by counsel for the plaintiff and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BENNETT:

Q. Will you please tell the Court your name, rank, command organization, and present station of duty? A. Paul J. Randall, Captain, Troop Commander, Eastern Shore District, Maryland State Police.

Q. How long have you been on the force? A. I have in about thirty-four years of service.

Q. How long have you been on the eastern shore on duty? A. The entire length of my service with the exception of three years which when I was assigned to the Pikesville Headquarters.

Q. Now, have you had any experience involving matters of racial tension? A. Yes, sir, I have.

Q. Can you tell the Court when and where this experience was? A. Well, from 1961 through 1963 at Cambridge and February, 1964, in Princess Anne, Somerset County.

[Tr. 33] Q. Now, the previous witness has described the situation in Princess Anne. Could you tell the Court what your experience was in Cambridge, Maryland, involving racial tension?

MR. ZINMAN: I am going to object.

THE COURT: We are going to sustain the objection.

BY MR. BENNETT:

Q. Were you present in Princess Anne on August 6, 1966? A. Yes, sir, I was.

Q. Did you talk to any of the defendants in this action at that time? A. Yes, sir. I spoke with Mr. Carroll. I introduced myself to him upon his arrival in Princess Anne at approximately half past six.

Q. Can you tell the Court —

THE COURT: Morning or evening?

THE WITNESS: P.M., sir.

BY MR. BENNETT:

Q. Can you tell the Court the substance of your conversation with the defendant? A. Mr. Carroll asked me whether or not there was any local law against the use of public address system and also whether or not there was any law against setting up in front of the courthouse here on Somerset Street.

[Tr. 34] And my reply to that was that I had talked with Mr. Powell, the town manager, and Mr. Powell informed me that no such local ordinance existed.

Q. Did you talk to anybody beside Carroll? A. My conversation was with Mr. Carroll although Mr. Stoner who I understand was attorney for the National States Rights Party was present.

Q. Let me go back a bit. Were you here in Somerset County, Princess Anne, on February 22nd or 6, 1964? A. I was here on February 22nd and again on February 26th.

Q. Did you have any personal experience at that time? A. Yes, sir. On February 22nd we had ap-

proximately four hundred students from the Maryland State College demonstrating on the Main Street of Princess Anne.

Q. The Maryland State College, is that a predominantly negro institution? A. Yes, sir.

Q. Continue. A. They were demonstrating at that time — that issue was public accommodations. And sometime during the afternoon of February 22nd there was what I considered to be a confrontation in front of Tawes Restaurant in the Main Street of Princess Anne in that approximately two hundred of these students pressed against the window and door of Tawes Restaurant and [Tr. 35] and on the inside of the restaurant there were many patrons, white patrons.

The students had the sidewalk completely blocked, They were so many in number that they had spilled out into the street which interfered with proper parking of vehicles along the curb. And it was my judgment that in view of what appeared to be a confrontation, should the two races get together — why I asked the students to move.

They didn't move and it became necessary to resort to dispersal measures and in the course of so doing why I was injured in that I received a laceration of the head and also a back strain. And as a result I am still on what is known as light duty by the medical division of the Maryland State Police Department as a result of the back injury in particular.

Q. Now, getting back to August 6th, at that time were you present during this so-called rally? A. Yes, sir.

Q. In front of the courthouse? A. Yes, sir.

Q. Can you tell the Court what you observed at that time? A. Well, following the conversation with Mr. Carroll members of the National States Rights Party began to set up a public address system in front of the steps, the entrance, to the courthouse on Somerset Street and ran a cable from a [Tr. 36] Volkswagen station wagon which was parked at the curb to supply the power.

And some time, approximately 7:15 I would say, the rally began with the playing of a record. It was music and voice, song, and I must say that the amplification was so loud that it could be, would be my judgment, heard for a distance of several blocks from the courthouse.

Q. Can you tell the Court what the nature of the record was? A. Well, I can't accurately quote the vocal part of the record other than I do know that the word nigger was predominant. And, if I remember correctly, at least I understood part of it to say we have got to kill them niggers.

Q. That is your best recollection of the record? A. That is my recollection. In any event, nigger was predominant throughout the record.

Q. Can you give the Court an idea of how many people were present in the immediate area? A. Well, at the inception of the rally I would estimate about fifty. However, as the rally progressed the audience increased and I would say that at the peak there were approximately a hundred fifty to two hundred in close proximity to where the rally was being held.

MR. BENNETT: May it please the Court, I observe Colonel Davidson sitting in the courtroom. Request permission [Tr. 37] for Colonel Davidson to remain.

THE COURT: He is not going to be called again.

MR. ZINMAN: No objection.

BY MR. BENNETT:

Q. Proceed, Captain Randall. A. As I stated, there were at the peak of attendance I would estimate to be a hundred fifty to two hundred people. The composition of the crowd was approximately twenty-five percent colored and there were many young people in the group.

Q. Now, at that time, Captain, did you take any action? First of all, withdraw it.

What was the disposition of the force of State Police that you had here at that time? A. Well, I had a total of sixty men here, or nearby, from the Eastern Shore Troop which is comprised of eight of nine

eastern shore counties and two Barracks, at Salisbury and Easton.

Now, at the inception of the rally there were six of us which the most part was command personnel including the two men in plain clothes, in front of the courthouse. As the rally progressed —

Q. Were they out on the sidewalk? A. Yes, sir. We were right out on the pavement here, the six of us. And the plainclothes men, of course, were going around from one side of the street to the other and [Tr. 38] through those in attendance.

Now, as the rally progressed it was my judgment that tension was increasing in that the expressions, particularly the colored in attendance, were such as to indicate to me that we could very well have trouble here.

MR. ZINMAN: Object, conclusion of the witness.

THE COURT: Overruled.

THE WITNESS: So having made that judgment my next step was to call in what we had set up, foving patrols of ten men. At first we had them patrol the main street and around the courthouse here. However, almost immediately I ordered those men out of the cars and to station themselves in proximity to the courthouse on all four corners here.

Shortly thereafter the crowd continued to increase and in my judgment the tension continued, too, people continued to be aroused and particularly the colored people here in what I term was inflammatory language, why, the next step was to call in reserve group of twelve men and they, too, were assigned in proximity to the courthouse.

And just prior to the conclusion of the rally, why, I called in additional twenty-six men which represented the two tactical squads of the eastern shore troop. So all in all, the, at the — just prior to and at the conclusion of the rally we had approximately sixty state police here in proximity to this courthouse.

[Tr. 39] BY MR. BENNETT:

Q. Can you give the Court the benefit of your judgment as to the emotional state of the crowd that was present at that time? A. Well, —

MR. ZINMAN: Objection. Object, Your Honor.

THE COURT: We think that is too broad.

BY MR. BENNETT:

Q. Can you — withdraw it. I think that's already been covered.

Now, Captain, you are in command of the Eastern Shore District? A. The Eastern Shore Troop.

Q. Of what is that composed? A. That is composed of Easton and Salisbury barracks and the territory this encompasses, eight of nine, eastern shore counties starting north with Kent and coming down to the lower three.

Q. How many men are there available or on duty assigned to the Salisbury barrack? A. Salisbury barrack's authorized strength is forty-three.

Q. How many of those men are not available for regular police work? A. Due to leaves, vacations, sick leaves, et cetera, [Tr. 40] one-third are off at all times. So normally we have twenty-five to twenty-six men on duty daily at the Salisbury barrack.

Q. Twenty-five to twenty-six? A. Yes, sir.

Q. What are the duties of the Salisbury barracks? Do you call them barracks? A. Barrack "E", Troop "D".

Q. What are the duties of Barrack "E", Troop "D", normally? A. Well, the duties of Barrack "E" is the same as the duties of Maryland State Police Department as set forth under Article 88B which is the State Police Act and that is primarily the enforcement of the Motor Vehicle Code and the prevention of highway accidents. In addition thereto we are charged with enforcement of the criminal laws, general police duties. And this is what we do throughout the three-county area which is the territory of the Salisbury barrack, Worcester, Wicomico, and Somerset Counties.

Q. This is the normal police duties, is it not? A. That is right.

Q. Are you called in at any time to furnish additional men to investigate and control accidents on the highways? A. Primary duty.

Q. What about fires? A. Occasionally we respond to fires for traffic [Tr. 41] direction control.

Q. Now, in your judgment what would be a sufficient number of men, policemen, to adequately police a rally such as the defendants held here in Princess Anne on August 6th? A. Sixty.

Q. Are there that many available at Salisbury barrack? A. No, sir.

Q. Where would you get them? A. Well, in order to bring sixty men here it was necessary to bring troopers from as far away as Kent County. It was necessary to cancel leaves; it was necessary to cancel duty hours. We normally work 10-hour shifts, you might say, and it was necessary to cancel the duty shift at both Easton and Salisbury barracks and to cancel departmental leaves of some men.

Q. Now, assume that this situation were to arise, what would happen to the rest of the area for which you are responsible? A. Well, most certainly the remaining counties were without adequate State Police service.

Q. Now, consider the crowd of five hundred students from Maryland State College, mostly negro, and consider a rabble-rouser's language being such as exuded at the courthouse, in your opinion what would be the natural and probably consequence of the peace and order of the community?

[42] MR. ZINMAN: Object, Your Honor.

THE COURT: We think he is in a position to testify if anybody is. Overruled.

THE WITNESS: I think we'd have a riot.

MR. BENNETT: No further questions.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. ZINMAN:

Q. Captain, you indicate that you are in charge of the eastern shore area, is that correct? A. Yes, sir.

THE COURT: Lower eight counties.

BY MR. ZINMAN:

Q. Lower eight counties? A. It is all except Cecil.

Q. Now, when defendants in this case made inquiry of you as to whether or not there was a law against setting up amplification system and conducting a meeting in front of the courthouse you advised them to the best of your ability, is that right? A. Yes, I advised them on the basis of my understanding from the town manager of Princess Anne.

Q. And you knew at the time, did you not, that they were going to conduct a rally in front of the courthouse? A. Yes, sir.

[Tr. 43] Q. And you knew at the time, did you not, the type and kind of group that they were, the States Rights group or — A. Yes, sir.

Q. And you knew at the time that the kind of rally that they were going to hold was one of a racial rally in nature, exhortations to racial prejudice were going to be made, did you not? A. Well, I would like to answer that this way. To the contrary. I had asked Mr. Carroll about that. He told me a rally, political rally, political in nature.

Q. You knew — in other words, from your experience with these groups and racial problems in general, you knew that the States Rights group in the political context of that pitch would appeal to race prejudice, did you not? A. I assumed as much, yes. I have had no personal experience with members of the National States Rights Party prior to August 6th.

Q. And did you not request of these defendants that they not make reference to present cases? A. Yes. In talking with Mr. Carroll and Mr. Stoner I made mention of the fact since it was a matter of public information that there were several cases pending in this county that I felt perhaps make it extremely sensitive area.

Q. And they in fact during the entire course of this rally didn't make any mention of two cases about which [Tr. 44] you refer, isn't that correct? A. They referred to a case —

Q. Years ago? A. — where a 76 year old woman was raped and an uprising of three thousand people here.

Q. I am referring now to the present cases. They heeded your suggestion with regard to those two cases that you admonished them not to mention? A. Mr. Stoner did not say anything that would be prejudicial to any pending cases.

Q. And then at that time, Officer, you did extend to them at least within the ambit of your authority the right to hold a rally in front of the courthouse? A. I didn't know of any law that would prohibit it based on my understanding of local ordinances and I knew of no state law.

Q. You had no reason at that time from either your experience with racial questions generally or observation concerning the defendants particularly to deny them the right to hold a rally at the inception? A. I didn't, no, sir.

Q. Despite the fact that you were aware of substantial racial tension existing here several years ago that you knew about which you mentioned a few moments ago? A. Yes.

[Tr. 45] Q. How long did the rally last, Officer, approximately? A. I estimate it started approximately shortly after seven with the playing of records and then the speaking, I would say, terminated at about eight twenty-five.

I had asked Mr. Carroll to give me some idea as to the extent of the rally. He indicated about an hour. However, Mr. Stoner indicated about an hour and a half. And my purpose was and I so indicated to those gentlemen that I thought it advisable that the rally terminate before darkness. However, it did not terminate until just about darkness.

Q. So it lasted about, approximately an hour? A. About an hour twenty minutes, that would be an estimate.

Q. That was about what they told you the length of time would be in the beginning, give or take a few minutes? A. Carroll said an hour; Stoner, an hour and a half.

Q. Now, Mr. Stoner was also a speaker at that rally, was he not? A. Mr. Stoner?

Q. Yes. The man purporting to be the Attorney-at Law. A. Yes, he was.

Q. And was it not true that the substance of his speech related to school bussing and the federal government intruding in local affairs? A. It seems to me that is what the substance of his [Tr. 46] talk was.

Q. Is it not true that he criticized one of your commissioners, Mr. Gray, I believe, the school commissioner? I don't have the name correct, but — A. Mr. Bond.

Q. Wasn't he criticizing the policy of bussing and — withdraw the question, I am sorry.

John Bond, isn't it? A. Some reference was made to Mr. Bond, whether or not by Mr. Stoner I don't think I can recall.

Q. Do you know approximately how long it was that Mr. Stoner spoke? A. Compared with Mr. Carroll, and Mr. Lynch, and Mr. Norton, I would say that Mr. Stoner spoke the least amount of time, spoke less time.

Q. I am not trying to tie you down to the exact time. You wouldn't know approximately? A. I don't know how long he spoke, really.

Q. Now you had the occasion to listen to Mr. Carroll, the defendant, one of the defendants seated next to me? A. Yes, sir.

Q. And is it not a fact that in the course of his speech he sought to recruit local people to join the States Rights Party? A. I think visitations of that nature were made. [Tr. 47] However, along with being conscious of the speaking I had another job and my job is to be observant and —

Q. Is it —

MR. BENNETT: I object to counsel interrupting; let the witness answer the question.

MR. ZINMAN: I want to give the chap — I would appreciate him being responsive to the question. Counsel can question him on redirect examination.

THE COURT: Gentlemen, let's proceed; you are drawing it out. Go ahead.

BY MR. ZINMAN:

Q. Now, did you also have the opportunity to — about how long would you estimate Mr. Carroll's speech to be? A. I —

Q. If you know, if you don't — A. Mr. Zinman, I don't believe I am qualified to say. It may have been ten minutes long, or — I really don't know.

Q. Now, during the entire course of this rally, neither you nor any of the other officers on duty had occasion to make any arrests, anybody in the crowd or the defendants; isn't that correct? A. Did we have occasion to make any arrests?

Q. Did you make any arrests? A. No arrests were made.

Q. In fact, no charges of a criminal nature at that [Tr. 48] time were placed against any of the defendants or anybody in the crowd, isn't that correct? A. That is correct, Mr. Zinman.

Q. And in fact, other than tenseness that you indicate, there were no untoward incidents or violence or anything of that nature? A. I am of the opinion that the presence of the State Police prevented that.

Q. In fact, Officer, if there were any such incidents you would have placed charges, would you not? A. We were here to enforce the law impartially.

Q. In fact, if there was any danger at that time of a riot taking place you would have gone beyond that and stopped the rally, would you not? A. Possibly so.

Q. That was your duty as an officer of the Maryland State Police? A. As a matter of fact, Mr. Zinman, a good ten minutes before the rally concluded I had indicated to Mr. Carroll before the rally started that if in my judgment tension was building and the rally should be stopped that I would so indicate to him. And I caught Mr. Carroll's eye, he was up near the microphone speaking at the time, and I nodded to him and he nodded in acknowledgement back. However, the rally continued for at least another ten minutes after that.

[Tr. 49] Now the reason for that was it was my judgment tension was building and it was reaching the point where a spark could have set it off and so I indicated that by nodding as previously arranged to Mr. Carroll.

Q. Wasn't there a suggestion to Mr. Carroll, at the beginning of the rally that it be confined to daylight hours? A. It was the request of the State Police that the rally terminate prior to darkness.

Q. Wasn't that the reason for nodding and so informing Mr. Carroll? A. Mr. Zinman, I have already testified to the reason for nodding.

Q. But there was no reason at all for the State Police to break up the rally at any time and no untoward incidents? A. Well, the State Police —

THE COURT: You have been through that.

MR. ZINMAN: Withdraw the question, Your Honor.

THE COURT: You have gone through that, ask another question.

MR. ZINMAN: Withdraw that question.

BY MR. ZINMAN:

Q. Really, in your testimony, Captain, you related that during the 1964 racial problems that the students of the University of —

[Tr. 50] THE COURT: Maryland State College which had some four hundred students.

BY MR. ZINMAN:

Q. Is that right? A. That is right.

Q. That school is not in session now, is it not? A. I really don't know. It's my understanding that it is not in full session. However, there may be some summer classes going on, I don't know.

THE COURT: He doesn't know.

MR. ZINMAN: No further questions.

REDIRECT EXAMINATION.

BY MR. BENNETT:

Q. Captain Randall, one question for the record. Will you state what cases you were talking about when you were talking to Mr. Carroll about not making any

mention of cases, this is prior to the rally? A. What cases, by name?

Q. Yes, what they involved? A. They involved allegations of rape with the victims being of the white race and the accused being of the colored race.

MR. BENNETT: No further questions.

[Tr. 51] RECROSS EXAMINATION

BY MR. ZINMAN:

Q. In that connection he fully cooperated with you by not making any mention of these specific cases? A. They didn't mention specific but they did refer to the rape of a seventy-six year old woman in this county and the uprising of three thousand people.

Q. That was thirty years ago, was it not, the rape? A. 1933. I was here, sir.

Q. The rally broke up peaceably? A. Yes, sir.

THE COURT: You are talking about the rally on August 6th?

MR. ZINMAN: Yes, sir.

THE COURT: We will recess for lunch now.

(Thereupon, at 12:05 p.m., the hearing was recessed.)

[Tr. 52] AFTER RECESS

THE COURT: Mr. Bennett, Mr. Jones, can you call a witness?

MR. BENNETT: Yes, Your Honor, Corporal Chaffey.

Thereupon —

SAMUEL R. CHAFFEY

was called for examination by counsel for the plaintiff and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BENNETT:

Q. Will you please state your name, your rank, your organization, and your present duty station? A. Samuel Ray Chaffey, Corporal, Maryland State Police,

Salisbury Barrack, Assigned to the plainclothes division, criminal investigation.

Q. How long have you been on the force? A. In the Maryland State Police, ten years, sir.

Q. And how long on the eastern shore? A. With the exception of six months training at Pikesville, the rest of the time on the eastern shore.

Q. Have you had any experience in matters involving racial tension? A. Yes, sir. I have been involved in demonstrations [Tr. 53] and so forth since they started at Cambridge back in '62 and '63.

Q. Were you present in Princess Anne in '64 during this trouble? A. Yes, sir, I was.

Q. Were you present in Princess Anne on August 6, 1966? A. Yes, I was, sir.

Q. Did you have occasion to talk to or participate in any conversation with any of the defendants in this case? A. No, sir.

Q. Did you — strike it out.

Were you present on that date at or about the time of 7 o'clock in the evening? A. Yes. Yes, sir, I was.

Q. Now, will you tell the Court what you observed in and about Princess Anne, specifically the courthouse area at that time and place? A. Yes, sir. I was assigned as plainclothesman in this area to work as intelligence surveillance. At the time of the commencement of the rally I stationed myself on the west side of Somerset Avenue or Main Street just about in a position opposite where the rally was going on at the steps of the courthouse.

At the commencement of the rally there were [Tr. 54] approximately fifty people present on the streets and as it progressed I would say the crowd grew to about two hundred people. I would say maybe twenty-five percent of these were colored people.

THE COURT: What percent?

THE WITNESS: Twenty-five. About fifty people out of the two hundred would be colored.

I noticed that most of the colored people were in an area at the intersection of Somerset and Prince

Williams Streets, at the red light here on the south side of the intersection. However, there were a few on the east side of Somerset Avenue.

There was one particular group of between four and six colored males who I kept under observation because they seemed to be getting pretty disturbed and angry and agitated at the speech that they had heard.

BY MR. BENNETT:

Q. This was during the course of the rally? A. Yes, sir. This same group left proceeding south — correction, north on Somerset Avenue. They passed directly by me and I heard one say let them do it now if they are going to do something. Then within a matter of ten or fifteen minutes this same group came back and stationed themselves in the same area, directly opposite the courthouse steps on the west side of the street.

[Tr. 55] I noticed as the rally progressed the tension among both the colored and the white progressed, increased, I walked down to the intersection of Somerset and Prince Williams Street where the majority of the colored people were. They appeared to be disturbed and angry and these expressions shown on their face. They remained in this position; they did not mingle among the other groups. They stayed over on this side of the street.

Q. Could you give the Court your estimate of the emotional state of the crowd?

MR. ZINMAN: Objection.

THE COURT: Sustained. We think he has gone into that. He has described what he saw at that time, conversation he had heard.

BY MR. BENNETT:

Q. Now you have described for the Court what you observed among the colored people. Did you observe the white people in attendance at that rally? A. Yes, sir, I did. However, most of my observation was made on the opposite side of the street not within the confines of the rally. There were some remarks made which indicated to me tension increased among the whites as the meeting progressed.

Q. Do you know how many State Police were on duty at this particular time and place? [Tr. 56] A. No, sir. I am not familiar with it.

THE COURT: That has been testified to by another policeman.

MR. BENNETT: No further questions.

CROSS EXAMINATION

BY MR. ZINMAN:

Q. Corporal Chaffey, during this entire period of time you did not have the occasion to make any arrests for any violations of the law, did you? A. No, sir, I did not.

Q. And if there were a violation of law by those six colored fellows or anybody else you would have made an arrest, would you not? A. If there was a violation of the law?

Q. Yes. A. Yes.

Q. There was no discernible breach of the peace as such by anyone within your observation during the entire period of this rally? A. No, not among the spectators.

Q. Now, you have had — were you here during the trouble which occurred in 1964? I assume that was the racial demonstration? A. February '64, yes, sir.

Q. Now, prior to that time the racial relations in [Tr. 57) this particular area had been pretty good, was it not? That's prior to '64. A. Yes, it had been fairly good.

Q. And since that racial demonstration of 1964 you had — you have had fairly good racial relations since, have you not? A. Yes. I think there has been some instances of isolated cases.

Q. For the most part, the racial relationship between the negroes and whites of this particular area has been pretty good, right? A. To my knowledge, yes, sir.

Q. And especially so in comparison to Cambridge and other areas of the state, isn't that correct? A. I think that things have quieted down to a certain extent in both Princess Anne and Cambridge also.

Q. So that immediately before the rally of August 6, 1966, about which you testified, the racial relationship here was pretty good? A. I think so, yes, sir.

Q. Do you know where the Maryland State College is located? A. Yes, I do, sir.

Q. Do you know if that is in session now? A. No, it is not in session now.

[Tr. 58] Q. Would you know if there is any students there now? A. I don't believe there would be any unless a few working on the campus.

Q. That is a negro college, is it not? A. Yes, sir, it is.

Q. And during the height of the racial demonstrations back in 1964 of which you testified, the primary activities were with regard to picketing, et cetera, by many students from this college, was it not, colored students who participated in the picketing and so forth? A. Home people also.

MR. ZINMAN. No further questions.

REDIRECT EXAMINATION

BY MR. BENNETT:

Q. Corporal, you testified there was no breach of peace here on August 6, 1966. Can you state any reason in your opinion why there was no breach of peace at that time and at this place?

MR. ZINMAN: Objection.

MR. BENNETT: The matter was brought out by the other side.

THE COURT: We think he should be allowed to testify, if he knows.

THE WITNESS: Yes, sir. In my opinion because the State Police were here in force enough to control any [Tr. 59] outburst, any disorder.

BY MR. BENNETT:

Q. You were just asked if the disorder in 1964, in February, was brought about because of the students at the Maryland State College alone. Do you know of any other people allowed in those disorders?

THE COURT: He testified it was brought about by the students and townspeople.

BY MR. BENNETT:

Q. Do you know if there were any others involved in those demonstrations not students or townspeople? A. Yes, sir, there were, I beg your pardon, I am sorry. Or local people?

Q. Yes. A. Yes. There were people from out of town that were also in on these demonstrations.

Q. Do you know who they were and their purpose in what they were doing here?

MR. ZINMAN: Objection to the form of the question.

THE COURT: Did people from out of town or other than the college take part in the demonstration in 1964?

THE WITNESS: Yes, sir.

THE COURT: Do you know who they were?

THE WITNESS: I had known one, Gloria Richardson, in Cambridge. Right at the time I can't recall names of others. [Tr. 60] However, there were other people, who had also been in Cambridge disorders there.

MR. BENNETT: No further questions.

BY MR. JONES:

Q. Corporal Chaffey, you mentioned that you believe the college is now closed? A. Yes, sir.

Q. These five or six particular negro individuals that you had under observation and you quoted one of them. Were they associated with the college to your knowledge? A. I don't know, sir. I don't believe so. I believe an older group than associated with the college.

THE COURT: Who do you wish to call now, gentlemen?

MR. JONES: Norris Dashiell.

[Tr. 61] Thereupon —

NORRIS DASHIELL

was called for examination by counsel for the plaintiff and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q. Mr. Dashiell, will you state your name, age, and address, please? A. Norris Dashiell. I will be fifty in December and I live at 37 Mansion Avenue in Princess Anne. I am an automobile dealer.

Q. This is within the town limits? A. My home is in the town limit.

Q. Are you also one of the three members of Princess Anne Town Commissioners? A. I am.

Q. You were elected to that office in June? A. Correct.

Q. I believe you served prior to that date? A. That is correct.

Q. Were you present in Princess Anne on the evening of August 6, 1966? A. Yes, sir.

Q. At what time, sir? [Tr. 62] A. Just after 7 o'clock. I was uptown.

Q. Would you describe what you saw and heard on that occasion? A. I was called uptown by the Town Office, the policeman in the town and Corporal or Sergeant McGee was also in the Town office.

Q. That is Sergeant McGee of the State Police? A. That is correct. They were trying to get up with the Town Commissioners. I was the only one they could find at that minute and I come in the back way and turned back of the courthouse and gone back of the firehouse where the Town Office is. I heard an amplified noise when I made the corner so I kept on and parked and walked by the firehouse down the street, right along in here (indicating).

Q. Tell them how far that is from the courthouse? A. Just about half a block. I heard this haranguing and a real high microphone speaker going. And I listened for a while and to be honest I never heard anything like it in my life.

Q. Could you recall some of the specific phrases which you heard? A. Basically, every other word was nigger so I turned around and went back to the Town Office. And which they were waiting for me

there and they wanted to know if we had anything on the books that would control it.

[Tr. 63] Q. Who wanted to know? A. Sergeant McGee. And at that time, of course, I think Captain Randall came in and I in turn contacted the other two commissioners. And I attempted to contact the State's Attorney and attempted to contact you and you were out of town. And I contacted your father, your associate, and he came up and —

Q. Why did you attempt to contact me, sir? A. I wanted to find out from you if we did have a law governing this type of thing.

Q. In my position as town attorney? A. That is correct. And, of course, probably you know what went on from there. Your father did try to find some sort of ruling we had but we have none because evidently we have never gotten around to it or just one of those things. We didn't have a law and Cambridge did about loudspeakers of that type.

Q. Getting back to these words that you heard, you heard them as the rally was being conducted? A. That is right.

Q. Do you remember any other expressions that you heard? A. I tell you frankly it dumbfounded me a little bit and I was standing there with my mouth right wide open.

Q. What was your reaction? [Tr. 64] A. Nigger was the basic word.

Q. What was your reaction? A. That if we didn't get something done to slow it down, knowing what I know about the tension around here between the races — we are all the time giving and taking and talking back and forth, as everybody know, about the civil rights deal. And I know that it is on a teeter, it could go either way, and anybody else around here know the same thing.

And I am just as positive as I can be that if this thing had been continued we would have a riot, to be truthful.

MR. ZINMAN: Objection and move to strike it.

THE COURT: Just a minute, please. Overruled.

BY MR. JONES:

Q. Mr. Dashiell, in your capacity as Town Commissioner — strike that.

Were the other two town commissioners, Mr. Lauchner and Mr. Price, were they finally summoned? A. Yes. We finally got them and it wasn't too awfully long when they came in and they concurred in the same things that I had already talked about with Captain Randall and your father, Mr. Jones.

Q. It was the official position of the town commissioners to seek legal assistance from the town attorney or others if he was not available to curtail this operation, [Tr. 65] is that correct? A. That is correct.

Q. Did the other commissioners concur in your belief that if it were not done it would lead to riot? A. Yes, sir.

MR. ZINMAN: Objection.

THE COURT: Sustained. Strike that.

BY MR. JONES:

Q. The action of the town commissioners as a body corporate was to seek legal action to break this up, is that correct. A. That is correct.

Q. Did you talk to any — were you approached by any citizens in this community in your official capacity as town commissioner to take or not to take any action in connection with this rally? A. We were in the office and when we were trying to come up with something a colored man, local colored man, more or less community leader in his race came into the office.

Q. Was he associated with the college in any way? A. No, just a local citizen. And he walked up to the counter and he took his hat off and apologized and asked if he could talk to us a minute. "Surely," we told him, "Sure. Go ahead." He said, "Gentlemen,—"

MR. ZINMAN: Your Honor, I am going to object to [Tr. 66] any conversation on the ground of hearsay.

MR. JONES: It is direct testimony of a town official.

MR. ZINMAN: I wouldn't have the opportunity to cross-examine the colored man. It is my contention that anything the colored man said, any conversation, with relation to the testimony of this witness would be hearsay. And as I understand, the colored man is not here in court to testify himself. I would be denied the opportunity of cross examination.

THE COURT: What about the request? Aren't we relating facts?

MR. ZINMAN: He has already testified to that, Your Honor, but he is going beyond that, I assume he is going beyond that, in testimony to relate the specific detail of the conversation.

THE COURT: We sustain the objection.

MR. ZINMAN: Thank you, Your Honor.

MR. JONES: Your Honor, this conversation was part —

THE COURT: We understand. We have already ruled, Mr. Jones.

BY MR. JONES:

Q. Did you have any reason other than your own observations to believe that the continuation of this rally or repetition of it would lead to riot as you expressed it? [Tr. 67] A. Yes, sir.

Q. What was that reason? A. Being approached by a member of the opposite race and asking us to please —

MR. ZINMAN: Objection. I object —

THE COURT: He is not to relate the conversation.

MR. ZINMAN: — to it for the same reason. He's answered yes or no in this; his answer was yes.

MR. JONES: That is all. Thank you.

CROSS EXAMINATION

BY MR. ZINMAN:

Q. Your first observation of the fact that this rally took place was made approximately 7 o'clock in the evening on the 6th? A. A little after seven. I didn't look at the clock after seven — a little after.

Q. I am trying to establish approximate time. Now, were you present at the time that the rally ter-

minated? A. Not on the street, sir; I was in the Town Office when he terminated.

Q. Well, did you have the occasion to observe the rally itself for any period of time other than just the observation of the few words that you heard? A. About five or six minutes, probably, I stood there and observed what was going on — not over that.

[Tr. 68] Q. So other than that you had no — other than that five or six minutes that elapsed, you had no other personal observation of the crowd or speakers, isn't that essentially correct? A. One thing on the speakers, Sergeant McGee had the radio in the Town Office set up and every few minutes they would hook it up so the speeches would come through the radio.

Q. You had heard the speech? A. That is right.

Q. You had no opportunity to observe the reaction of the crowd during it other than that five minutes that you were there? A. That is correct?

Q. Or the defendants, isn't that correct? A. That's correct.

Q. And you are basing — your basic concern then was with the, as you called it, word nigger being used frequently, isn't that correct? A. Abusive language.

Q. Now, prior to the rally the racial relations in this town has been pretty good on comparative basis, isn't that true, compared to most other eastern shore towns? A. As I told you before, the racial relations here are very explosive, they are on a teeter and we are trying to work with them.

[Tr. 69] Q. Well, other than the — maybe I should rephrase my question.

Mr. Dashiell, other than the instances which happened back in '64, you haven't had anything like that since happen here, have you, by way of demonstrations or things of that nature? A. The only thing we have had is a couple street fights, things of that sort. We haven't had marches and laying down in the street.

Q. But the street fights were individual instances, weren't they? A. Group against group, five or six against five or six.

Q. That wasn't racial in nature? A. One side white and the other was colored.

Q. When was that? A. I can't give you any specific dates but they have happened between the big demonstration and now.

Q. How many of them? A. Well, I know of two.

Q. Do you know of any others? A. Not right offhand, no, sir. I know of two.

Q. Were any arrests made as a result of those two instances? A. The police picked them up and took them around — [Tr. 70] Fortunately, they were fast in getting in there and breaking it up.

THE COURT: I can say to you arrests were made because I tried them, if that will help you any.

MR. ZINMAN: No further questions.

MR. JONES: May Mr. Dashiell be excused?

THE COURT: You are excused, Mr. Dashiell.

MR. JONES: Patrolman Charles Tenney.

[Tr. 71] Thereupon —

CHARLES W. TENNEY

was called as a witness by counsel for the plaintiff and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q. Officer, for the record, will you state your full name, address, age, and present occupation, please? A. Officer Charles W. Tenney, Baltimore County Police Bureau Detective Division, Intelligence Section, Baltimore County.

Q. Keep your voice up, please, sir. You are a patrolman, is that correct? A. Yes, sir.

Q. Did you have a special assignment or have you in the recent past had a special assignment? A. Yes, sir. Ever since February of this year I have been assigned to the intelligence unit.

Q. What are your duties consisted of? A. Our present duties?

Q. Your specific duties? A. My specific duty right now is to investigate both left and right organizations for information, rally coercion, and so forth like that.

[Tr. 72] THE COURT: Are you with Baltimore County or State?

THE WITNESS: Baltimore County Police.

BY MR. JONES:

Q. In this capacity have you attended rallies held by a group known as the National States Rights Party or people associated with it? A. Yes, I have. I have attended three rallies in Baltimore City and one here in Princess Anne.

Q. The defendants in this proceeding, do you know them by sight? A. Yes, sir.

Q. Were the ones who are the defendants in this proceeding, Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, and William Brailsford, were they present in both Baltimore and Princess Anne on the occasion when you were there? A. Yes, sir. Now in Baltimore City I didn't observe Mr. Stoner in the city.

Q. What were the dates of the Baltimore City rally? A. I think twenty-sixth, eighth and ninth of last month — or close to that.

Q. Within the last week of July? A. Yes, sir.

Q. How many rallies were there? A. There were three. They held a rally one night [Tr. 73] and missed a night and came back.

Q. Was this in Patterson Park in Baltimore? A. Yes, sir.

Q. What was — were you present — strike that. Were you there in person? A. Yes, sir.

THE COURT: Where in person?

MR. JONES: At Patterson Park, Baltimore.

BY MR. JONES:

Q. And were you also present in Princess Anne on August 6, 1966, at the rally held at or near the courthouse in Princess Anne? A. Yes, I was.

Q. Based on your personal observation and your official capacity, what was the nature of all of these assemblies, rallies?

MR. ZINMAN: Objection, Your Honor.

THE COURT: What was the nature of the assembly?

MR. JONES: Yes, sir, the type of rally that it was.

THE COURT: What is your ground for objection?

MR. ZINMAN: I think the question, Your Honor, is too broad. It is just so broad that it —

MR. JONES: Let me rephrase it.

[Tr. 74] BY MR. JONES:

Q. Was the nature of the rallies in Baltimore and in Princess Anne similar? A. Yes, sir.

Q. What was the nature of the rally in Princess Anne?

MR. ZINMAN: Object to that answer also, Your Honor.

THE COURT: Why are you objecting?

MR. ZINMAN: I don't think the organization is on trial for the rallies that were held in Baltimore City.

THE COURT: He is not asking him that. He asked the nature of the rally in Princess Anne.

MR. ZINMAN: Your Honor, are the rallies the same. It could very well develop that there were entirely different facts and circumstances connected.

THE COURT: Mr. Zinman, he asked him that and there was no objection to his answer. In Princess Anne, the nature of the rally or purpose — I forget the exact word — and now you object. And I can't — you have got to state some reason other than what you have.

His last question was, what was the nature of the rally in Princess Anne.

MR. ZINMAN: I thought, were they the same.

THE COURT: He said yes and you didn't object.

MR. ZINMAN: I objected after the answer was made.

[Tr. 75] THE COURT: Very much so. Go ahead and answer.

What was the nature of the rally in Princess Anne?

THE WITNESS: The nature of the rally is the same as the rest of the rallies, to stir up the white people against the negro race and Jewish race and so forth like that.

BY MR. JONES:

Q. Now was that done? Specifically, this is based again, sir, on your own observation? A. Well, the rally —

THE COURT: Here in Princess Anne?

THE WITNESS: Right in front of the courthouse on the steps.

The rally was started out by playing music which usually had the word nigger in it quite often and various speakers spoke about different things the negro done to the white people, the white people themselves are against the negro, and things of that nature.

BY MR. JONES:

Q. Was violence advocated in the speeches? A. Very much so.

MR. ZINMAN: Objection, a leading question.

BY MR. JONES:

Q. Would you describe some of the phrases or expressions or speech used and that you heard? A. Well, in some of the speeches, like I say, the [Tr. 76] word nigger was used. And one particular instance at the closing of the rally here in Princess Anne Richard Norton was the last speaker and Mr. Norton pointed in the group of negroes and was saying, "You negroes out on the street, this is for you. You are finished, you are done, you are through and you might as well prepare to leave. Now there are several ways you can go. You can go on a boat, on a bicycle, run, or in a box."

Q. Did you observe the reaction of the people who were within hearing of this speech? A. Yes, sir.

Q. What was that reaction? A. The white people were interested. Some of them were interested with agreement with what was going on, and some just spectators. Of course, the negroes were interested in that he was being slandered and feeling run high.

Q. What did you base that observation on? A. Well, from past experience at different types of rally. And also in National States Rights Party rallies they get the people worked up, both white and colored. Another instance [illegible]ht has broken out down here on the

street in Princess Anne. And there in front of the courthouse during the last part of the speeches four negro subject locked arms together and marched through the group of white people and it was right evident if there had been a push we would have had trouble.

[Tr. 77] Q. Is this based also upon your experience and observation throughout your career in this work? A. Yes, sir.

Q. All right, sir. Now, Patrolman Tenney, did you have any specific additional duty on that evening in Princess Anne? A. We came down with Sergeant Snider from State Intelligence at his request and we made a tape recording and also taken a hundred feet of movie film of the demonstration or rally, whatever you want to call it.

Q. Did you make such a tape recording? A. Yes, sir.

Q. Did you make such a film? A. Yes, sir.

Q. Would you describe the chain of custody from the moment the tape and film were made to the present time? A. Sergeant Shinnamon from our bureau in Baltimore County and I came down together with Sergeant Snider of the Maryland State Police. Sergeant Shinnamon and I set up the tape recorder and after putting the tape on the machine, I just pushed the button and it automatically taken care of itself. I shot a hundred feet of movies. We went ahead and taped the rest of the recording which had run after that time I was taking the movies of the rally, and removed it from the machine, put in the box and marked it Princess Anne and the [Tr. 78] date and the time and sealed it. It was in my custody in a locked security box in our intelligence office which is located in the Inspector's office. In order to gain entrance, you must have a key to come in the Inspector's office and a key to the locked cabinet which I am the one —

Q. You are the only one with a key? A. Yes, sir. The tape remained in there until this morning when I removed the tape and put it in my brief case and it has been in my custody ever since.

Q. Do you have it with you now? A. Yes, sir.

MR. JONES: I would like to introduce in evidence the tape recording made by Patrolman Tenney on August 6, 1966, here in Princess Anne together with the film taken by him on that occasion.

MR. ZINMAN: At this time I would like to object. Request the Court rule on this matter after I had an opportunity to cross-examine this officer in connection with the chain of custody as well as the making of the tape.

THE COURT: We think you have a right to make cross examination on that one thing now — concerning the chain of custody of the tape recorder and movie.

MR. ZINMAN: And also, Your Honor, I would like to have the opportunity to cross-examine as to the taking of the tape, making of the tape itself.

[Tr. 79] THE COURT: He made it. He had the machine.

MR. JONES: I am through with this witness. He can go ahead right now.

CROSS EXAMINATION

BY MR. ZINMAN:

Q. Sergeant, you testified that you are assigned to the intelligence section of the State Police, did I understand, primarily to investigate, as you refer to it, left and right wing groups, is that right? A. Counsel, I testified —

THE COURT: Officer Tenney testified he was assigned to the Baltimore County Police Bureau Intelligence Unit.

BY MR. ZINMAN:

Q. And this is the primary function? A. We have handled other types of investigation. Right now the sole investigation is left and right organizations which are organizations that you have operating in the state at this time.

Q. Now, when you came down here with Sergeant Shinnamon, was Sergeant Shinnamon the one that took the pictures? A. They were taken by myself.

Q. And what type of movies did you take? A. 16-mm at twenty-four frames per second. I think [Tr. 80] the light reading was approximately two point eight.

Q. Was that a whole reel of film? A. Yes, sir. 16-mm film comes in hundred foot length and we only shot a hundred feet. A hundred feet was the length of it. The whole time was probably over an hour.

Q. In other words, you were taking care of it from the time the rally started until the time it terminated? A. I shot pictures of the speakers, not the whole length of the speech — one speech or hour which would be wasted movie film.

Q. This is regular movies on a reel? A. Yes, sir.

Q. So that while you were doing this then Sergeant Shinnamon was the man that was checking the tape recorder, isn't that correct? A. There isn't anything to check, counsel. Like I testified to prior, Sergeant Shinnamon and I set up the tape recorder by simply opening the case, putting the tape on one spool, run to another spool, and pushing a button.

Q. After that it was Sergeant Shinnamon who had —somebody had to check it to determine whether or not the tape is being taken properly during the period of time that the rally is on, isn't that right? A. No, sir, it isn't necessary. It runs quite well by itself.

[Tr. 81] Q. What I am saying is this type continued from the time the rally started until the time it terminated? A. Yes, sir.

Q. And during this period of time you were busy for the most part taking pictures, isn't that correct? A. No. It only takes approximately, I'd say, at the most fifteen minutes to shoot a hundred feet of film.

Q. During that period of time that you were shooting the pictures Sergeant Shinnamon was taking care of the tape, wasn't he? A. I was standing beside it.

Q. The tape wasn't standing by itself, nobody there? A. Let it run, you don't have to watch it.

Q. Where was the microphone placed? A. The microphone was attached to the machine itself on a cord approximately that (indicating) long, laying on top of the machine.

Q. How far away from the actual speakers rostrum, if you want to call it that, was this microphone and tape placed, approximately? A. Well, now, it's hard to say. The simplest way I know — do you know where they came in the front door this (indicating) side of the building where they spoke from?

Sergeant Shinnamon stood right at the end of the grass, the length of the line. I don't know how many feet.

[Tr. 82] Q. Couldn't you tell me approximately? A. I don't — I wouldn't try to guess, I don't know.

Q. Did you or Sergeant Shinnamon request of this defendant to place the microphone right next to the speakers? A. No, sir.

Q. How about Sergeant Shinnamon? A. I don't know; I can't speak for him. In my opinion it wouldn't be necessary. In fact, in the past we have learned if we put the microphone too close to the speakers they talk too loud and it distorts the tape.

Q. After the tape was concluded, Sergeant Shinnamon wound it up, rewound it back? A. After I shot, like I say, about fifteen minutes more or less of movies, Sergeant Shinnamon and I stood there and talked and listened until they got done with the speeches. After the speeches were over the button was pushed and the machine automatically wound the tape up. He pulled it off the machine and handed it to me and I put it in the box and sealed it. There it is.

Q. He did the winding? A. Not the winding, he pushed the button which caused the machine to rewind it. It rewinds by itself.

Q. Do you know how long this rally lasted? A. It started at seven p.m. and exact running time I'd say over an hour and something. Of course, that includes [Tr. 83] the music and everything that went with the rally.

MR. ZINMAN: Your Honor, if the Court, I assume, is disposed to make a ruling on the introduction of the tape, I would like to reserve the right to cross examination as to the actual observation that Sergeant Tenney made later but I would at this point —

THE COURT: Patrolman Tenney from the Baltimore County Police Department.

MR. ZINMAN: I am sorry, Patrolman Tenney.

I would like to object to the introduction of the tape into evidence, if the Court pleases, on the ground that the tape is made primarily by the other officer or for a substantial period of time it was —

THE COURT: That is not the evidence.

MR. ZINMAN: Well, fifteen minutes —

THE COURT: That is not the evidence at all. Now go ahead, what is your objection?

MR. ZINMAN: That is my objection ot it, your Honor, for fifteen minutes he said that he was taking pictures and it was tended to by the other officer in charge.

THE COURT: He did not say that, sir. He said he pushed a button and it kept running. Both of them were standing by it. Now lets be fair with the Court with what he said.

Any other objection, sir?

[Tr. 84] MR. ZINMAN: No.

THE COURT: Overruled. Go ahead, sir.

Now he reserves his right to cross examination on what he had to say concerning his observation at the time.

MR. ZINMAN: Yes.

THE COURT: You still have that right to make that cross examination.

MR. JONES: As I understand, the tape and film are now in evidence?

THE COURT: They are in evidence.

MR. JONES: We would like to have the tape played to the Court and that would conclude our case, sir, if he wishes to cross examine the witness now.

THE COURT: Go on, play the tape.

MR. JONES: May we approach the bench?

THE COURT: Yes, sir.

(Thereupon, counsel conferred with the Court at the bench.)

MR. JONES: It is stipulated by and between cousel for plaintiffs and defendants that the film which was

introduced in conjunction with the testimony of Patrolman Tenney is a 16-mm silent film which shows only that the named individual defendants were present at the courthouse rally in Princess Anne, Maryland, on August 6, 1966, sponsored by the National States Rights Party. The film does not show [Tr. 85] any acts of physical violence or assault and battery.

MR. ZINMAN: I would like to, if you will, delete the reference to the National States Rights Party. As such, the film —

MR. JONES: Identify the rally sponsored by them.

MR. ZINMAN: Identify the individuals.

MR. JONES: I think that is there.

THE COURT: We are going to take a recess.

Mr. Reporter, you do not have to take this off the tape because the tape itself will be proof.

(10-minute recess.)

THE WITNESS: The first part of this tape you will hear background noises. Then the people quieted down and you can hear the speeches.

MR. ZINMAN: We request that the reporter make a transcript of the voices, of the speeches.

THE COURT: We will go into that when we get to it.

(Thereupon, the tape recording of the National States Rights Party Rally in Princess Anne, Maryland, on August 6, 1966, was played for the Court.)

(Tape Recording and film of rally in Princess Anne, Maryland, on August 6, 1966, was marked Plaintiffs Exhibit No. 1 and received in evidence.)

MR. JONES: We rest our case, Your Honor.

[Tr. 86] THE COURT: Do you want to ask him any questions or cross-examine?

MR. ZINMAN: Well, at this time waive the cross-examination of the police officer.

I would, however, have one additional request that I would ask the Court to have this tape which I believe is about an hour, a little more than an hour, typed up and made a part of the record.

THE COURT: You are prepared to pay for it, sir?

MR. ZINMAN: We will be prepared to pay for it.

THE COURT: Otherwise, it will not be written. Make arrangments with the reporter here and you can get it.

MR. ZINMAN: I would like the record to indicate that of all the defendants who are named in the petition only Mr. Carroll is present here in court in these proceedings and that after consulatation with Mr. Carroll, based upon my advise as well as the facts which were related to me within the lawyer-client province, there is nothing further than can be added to that evidence which has already been introduced, either from a standpoint of legal defense or from the standpoint of the facts as they exist, according to Mr. Carroll, and consequently the defense rests his case at this time.

THE COURT: Before you sit down, I would like to hear you on one point. In your answer you say the petition, by way of affirmative defense, that this Court does not have [Tr. 87] jurisdiction over the subject matter or the parties.

MR. ZINMAN: I believe the question of jurisdiction can be raised at any time during the proceeding. I suppose it is best now.

THE COURT: Both sides rest, I think it is time —

MR. ZINMAN: As to this question, I believe that I would raise that with regard to — Your Honor, I would raise the question of jurisdiction with regard to the person of William Brailsford, J. B. Stoner, Robert Lyons, and Richard Norton on the ground that they were not personally served by the Sheriff. Mr. Carroll tells me that he was served personally. And I would also raise the same objection with regard to the National States Rights Party as such on the ground that this in not an incorprated association as described by the annotated code of Maryland which can be served through an agent. It is not a stock company as such. In fact, there has been nothing introduced in the record at all through the evidence in this case concerning the National States Rights Party as such.

We don't know other than the references that it is an organization allegedly advocating certain pre-

cepts of life, ideas, if that is the way you want to refer to them.

THE COURT: I thought it was a political party.

MR. ZINMAN: Or political party. We don't know if there are two members or ten members or if it is organized in every state. I don't believe it is the kind of association [Tr. 88] that is served by personal summons or the subject of jurisdiction of this Court as such. If that were the case, maybe I am being a little bit premature in argument. I was going to take it up later in the context.

THE COURT: You agree that the jurisdiction over the subject matter —

MR. ZINMAN: The jurisdiction — when you say subject matter, I am assuming that it would be the person, Mr. Carroll.

THE COURT: And over subject matter is that we have jurisdiction over the parties if they are properly in court.

MR. ZINMAN: I agree on that.

THE COURT: Now comes Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford, and the National States Rights Party by their attorney William H. Zinman and Garrett Power and respectfully answer the petition as follows.

MR. ZINMAN: Your Honor, with regard to that — the pleading, of course, was the pleading of the defendants in this case — I believe served two-fold purpose.

Now, with respect to Mr. Carroll, we deny all of the allegations.

THE COURT: The defendants admit all; the defendants neither admit nor deny; the defendants deny all the allegations —

[Tr. 89] MR. ZINMAN: The first allegation, admit it was one which alleges the corporation of the — the manner in which the town of —

THE COURT: Counsel have admitted and denied certain things for all the defendants.

Then you are in court.

MR. ZINMAN: Yes, I feel —

THE COURT: Subject matter gives us no concern.

MR. ZINMAN: Your Honor, I feel that the last reference to lack of jurisdiction constitutes appearance especially.

THE COURT: No. I don't want to argue with you on that. I understand the rule, if your appearance is entered generally or a special purpose, that you are in on special. That is Keene v. Keene, which I got caught in myself in the Court of Appeals. Now, then, I understand the rule conforms to it but here you have denied all and you say we don't have jurisdiction. I think you are in court.

MR. ZINMAN: I wanted the objection for the record, Your Honor.

THE COURT: You are in court.

MR. JONES: Your Honor, for clarification, may I raise one point? He pointed out only the defendant Carroll is in court. I understood he was representing all defendants.

THE COURT: I understood him to mean Mr. Carroll [Tr. 90] was the only one of the defendants present in court.

MR. ZINMAN: And the only one that was served, Your Honor.

THE COURT: We understand.

Now, Mr. Zinman, what is your peasure. I understand you want the tape written up. Do you want time to file a brief or would you want to argue now, or what is your pleasure?

MR. ZINMAN: I believe the petitioner has the preference to argue first and I would like to follow him — according to the usual proceeding.

THE COURT: Are you going to have it written up?

MR. ZINMAN: Well, —

THE COURT: If you are, I presume —

MR. ZINMAN: I would feel if it would be O.K. with the Court, proceed on the basis of evidence that has been already adduced and I was mainly concerned about the testimony in the tape in the event that the ruling is adverse and the parties sought to be enjoined

desire to appeal. Then I would like to have the entire record.

THE COURT: Of course, if you are going up with it you have to have the record. Do you think it quite fair to us to sit here and remember the record? Of course, it is fresh but then go up on the record which is typed which you have specific items to point out when we have to rely on memory.

[Tr. 91] In other words, what I am saying to you is don't you think we ought to have advantage of whatever you go up on?

MR. ZINMAN: I agree, Your Honor, the only thing I would like to do whatever is convenient for the Court and I anticipated, maybe improperly. The Court would like to dispose of this case in due course as quickly as possible.

THE COURT: Correct.

MR. ZINMAN: I don't mean to anticipate. If the ruling of the Court would be favorable, of course no appeal.

THE COURT: Favorable to whom?

MR. ZINMAN: I mean when you — I don't anticipate what can happen in the case. It is just that I feel on behalf of my client in the event there is an adverse ruling and they should want to appeal, at least have the benefit of the record. That is why I made it.

MR. BENNETT: May I make a suggestion? Perhaps counsel will stipulate to argue the case now on notes and if the Court chooses to make a decision now we will stipulate that the Court need not file a written opinion until the record is presented to them.

THE COURT: We don't want to do that. You don't think I am going to sit here and guess at certain things and then you take me to the Court of Appeals and have a full record, do you?

MR. BENNETT: I thought the injunction would be [Tr. 92] granted or denied.

THE COURT: Gentlemen, do you want to argue?

MR. ZINMAN: Yes, sir.

May we approach the bench?

THE COURT: Sure.

(Thereupon, counsel conferred with the Court at the bench.)

MR. BENNETT: For the record, the County Commissioners waive the opening of the argument and reserve the right to close.

(Thereupon, after argument by Mr. Jones, Mr. Zinman, and Mr. Bennett, respectively, the following occurred:)

THE COURT: Gentlemen, the injunction decided by me on August 6, 1966, will continue in effect until further order of this Court is filed in the next few days.

(Thereupon, at 4:45 p.m., the instant hearing was concluded.)

[48]

NATIONAL STATES RIGHTS PARTY RALLY
PRINCESS ANNE
SOMERSET COUNTY, MARYLAND

August 6, 1966 - 7:11 P.M.

(Music - song)

(Unintelligible.)

(The following is unidentified voices:)

"How are you doing this evening?"
"Pretty good Stoner, how's yourself?"
"Couldn't complain about a damn thing."
"Suppose we'll cause a riot in Baltimore tonight?"
(Laughter.)
"There's a lot of colored on this street."
"Huh?"
"There's a lot of colored on this street."
"You mean a lot of niggers."
(Garbled.)
"If they don't want to hear it, they can get the hell [Tr. 2] out. It's not their meeting to begin with. They'll find me over there in CORE's gang (inaudible) piddling around.

"Darn right."

"These niggers try to mingle with white people (inaudible) they ought to have better sense than that."

"We are going to bring some boys over. We told Gill —"

"We'll do all right for about — We only had about three hours notice. If we get about 50 or a 100 the first night, we will triple or quadruple it by tomorrow night."

"Oh, you're coming back tomorrow night, huh?"

"Yeah."

"Can't come back Monday, we'll have to be in Court."

"I told the Judge yesterday, ah, (inaudible) when I was coming down (inaudible) — I see in the, I guess the Dorchester County paper the NAACP give a yes or no on the new (inaudible). Stoner knows quite a bit about this. All the community has to do is say no, then the amendment is it. No reason at all.

[Tr. 3] "Well, then they can always go into court — jammed up a (inaudible) couple more years. A few more riots in Cleveland and Chicago then the northern politicians — I say Martin Luther King (inaudible) walking through those Poles and Lutherans ought to have his head examined I would think, you know.

"Who are you, sir?"

(Inaudible.)

"What's your position, sir?"

"I am State Coordinator."

"From Baltimore, sir, city or county?"

"Baltimore City."

"You're State Coordinator and Mr. Carroll is Executive Director?"

"He's Director."

(Inaudible.)

"How many of you are going to court Monday?"

(Inaudible.)

"How many of you are going, not of your own volition?"

[Tr. 4] "Where?"

"To Court."

"You don't have to in this (inaudible) county.

"You don't?"

"No."

"This is different, this is different. There's two sets, two sets of things. There's criminal indictment charges —"

"Yeah."

"— and there's an injunction."

"Now Monday's injunction —"

"Yeah, Thomas Hines will ask the Court to extend the injunction — I don't know — ten days perhaps tenative which (inaudible)." "Nothing else, we'd like to have a modification of the injunction next week in Baltimore City. Next step after that will be held — to go to court and fight Mr. Agnew on the (inaudible.)"

"It's obvious as hell, you can't — nothing else you can [Tr. 5] do about it. You can't violate an injunction of the Court over the weekend. Violation of — violating an injunction of the Court is a very severe penalty.

(Inaudible.)

(Music.)

"How many of you all came down from Baltimore?"

"I count six, seven. You, Carroll, Brailsford, and a (Inaudible)."

(Music).

7:21 P.M.

"You people standing across the street come on over here to the courthouse property where you can hear all the people who (inaudible). Well, you all heard about us — about Baltimore City — heard about us starting a riot, all kinds of trouble, this that and the other. Well, that's not true. We brought the view of the white man into the public eye.

[Tr. 6] Now CORE was in Baltimore and they preached about their black power and how they were going to terrorize the city, force everybody to integrate, how they were going to terrorize the entire State which includes all of us here in Princess Anne.

And they swore that they were going to beat us to our knees.

Well, CORE came, CORE struck out and it's our turn at bat. However, their lackey politicians up there didn't like it. They didn't like white people standing up and proclaiming their rights as white people. So, they force unconstitutional injunctions and indictments against white people for standing up and preaching for white power, the organization, political organization, of white people to smash black terror.

And let's face it. Black terror does exist in every part of this State of ours and the country of the United States. I don't have to cite to you examples from Harlem or from Washington, D.C. or even from our own City in Baltimore [Tr. 7] and around the State of Maryland. You know what I am referring to when I refer to black terror. And that is what CORE means by black power.

Don't let them buffalo you into thinking that it means just obtaining political power. It means black terror. And remember that.

We are here in Princess Anne not as outside agitators as some people might like to refer to us, but here as white people, bringing to you the news that white people are organizing and organizing now, here in this State, in this time, to smash black terror and the communist conspiracy within the United States Government.

I think a very vivid example of the power structure that the niggers have today in Baltimore City is the fact that when white people stand up for white rights that they can get illegal and unconstitutional injunctions against it and force white people to submit in the place of going to [Tr. 8] jail for months and for years against violating an unconstitutional injunction which is just standing up and expressing their point of view.

Now communists and CORE have come and preached their, ah, philosophy, if you want to call it that, in our streets, they force bars to integrate, they force measures to be taken against this law we had in — the beautiful constitutional law which provides the mongrelization of the white race with the niggers and they try to bring us to our knees and no one forced any objection; but when white people try to stand up and voice their opposition, they are stopped cold by unconstitutional injunctions, by these vermins and these nigger lackey politicians; and, temporarily, we are stopped.

But we intend to fight and fight now and fight in the courts every legal way we can to smash these vermin, to smash them (8naudible) plan to assimilate the white race, to show head Agnew up Towson that he is not some kind of commissar [Tr. 9] that can dictate to the white people of the county and show Joe Alton that he is another one down in Anne Arundel County. They say we can't rally.

(Applause.)

Now you white people might wonder what we are. We speak chained-to-the-wall darlings and breathing fire and hate — No. We are white people like yourselves standing up for our constitutional right. We have taken enough off of these niggers, enough off of Martin Lucifer Coon and his rabble, and we are going to stop these race-mixers and stop them now.

The white people have taken enough and the time is come for us to stand up and politically organize today. There is only one party, one party in all of America, one organization, barring none, which stands up for the rights of the white people, and that is the National States Rights Party.

(Applause.)

Now I am going to turn the mike over to Mr. Richard [Tr. 10] Norton, our State Coordinator."

(Garble.)

7:27 P.M.

MR. NORTON: "I stopped at a friend of mine in Cambridge, Maryland, and picked a copy of the Dorchester Times up. There is an article on the front page that said the NAACP is demanding that this county school board initiate and follow federal guide lines for school integration. In other words, I think for two years here you people operated under what they call freedom of choice program. If a nigger wanted to go to a white school all he had to do was go. But apparently most of the niggers around Princess Anne were satisfied with their school. This didn't satisfy the NAACP.

Now let me talk to you very carefully and very quietly. Certain things can happen. The school system in this county has a choice. You people have a choice. The choice is accept LBJ's Judas 30 pieces of silver federal aid money and integrate your school or else stand as one and tell the school board. [Tr. 11] "No, no, no. We don't want it." Let me tell you something what happens in a world community when you accept federal school money. It's very simple. I suppose right down in the high school here you have school dances, you have parties. One year from now if you accept that federal money you won't be able to have any school dances. I know. I'm from a rural high school in Maryland myself. I went there. I left there graduated the year before integration became so-called law. If you accept it, forget that school, forget the school.

The situation is, if they accept the money, will the school commissioners be responsible for personal white girls raped in one of these schools? The first kid that's beaten? Are they going to accept this? Are they going to sacrifice white blood, some child, for LBJ's money? It's a very simple question, very basic. You have a decision to make, a choice to make, Take that federal money and pay the price or else say no.

[Tr. 12] I know — I know the people of this county don't want it. Thirty days ago I sat in the (inaudible) [Enoch Pratt] library in Baltimore, Maryland, going over a microfilm. I got to the 1933. In 1933 a nigger grabbed a 75 year old white women in this town and brutally raped her, brutally raped her. What did they do? Did the people go out and say that nigger was a victim of discrimination and that's why he raped her? No. Let me tell you what happened. I am not advocating this but I am just recounting a bit of history. Three thousand people from this town rose up, took that beast out and hung him. You know what the Baltimore papers said, you know what they said? They called it eastern shore barbarian, eastern shore barbarian. Not a lot of oldtimers here tonight remember the stickers you all had on your cars and window. "I am an eastern shore man and damn proud of it." You folks proud of it?

VOICES: Yeah, yeah.

MR. NORTON: All right, all right.

[Tr. 13] VOICE: Yeah.

MR. NORTON: The act, this is a political struggle we're in. It's a struggle for survival. Don't think you have it bad down here with niggers. Really, it's not too bad yet. Come to Baltimore City, see what's happening to schools there. The school superintendent of Baltimore City, the excellent Dr. Brain, three years ago his daughter went to Western High School. A nigger girl took a coke bottle, smashed the bottom out, and gouged that poor child's face. Well, after that Dr. Brain resigned, gone to Portland, Oregon, so his daughter could have plastic surgery. Now these boot-lickers and political vermin, some of these preachers will tell you they accept this, this is insanity. Don't accept it. Never accept it. Organize. Fight it. You'll win every single time. You want to fight? Come on, let's hear it. Want to fight?

VOICE: Yeah, yeah.

MR. NORTON: All right, all right. Now we have a legal [Tr. 14] expert here tonight, our party attorney, J. B. Stoner. He knows everything about this federal money, the federal guide lines. Now listen to him very carefully. There are very reasonable, logical steps you can take to beat this thing. To beat it. I am going to caution you again, they have accused us in Baltimore City, the politicians, of inciting riots, conspiracy to riot, riot, disorderly conduct, breach of the peace, and cussing and swearing in the court, cussing and swearing in the court. They have so many charges on us now will take five years to get it straightened out. I want to make it very clear, after the meeting is over — I don't ask anyone — I beg you not to go out and kick a nigger in the head, smash his teeth in, or anything like that. This is what they like, they think we advocate it, we don't.

This is a political battle, pure and simple, that's all it is.

All right. Mr. Stoner has a few words for us. Let's [Tr. 15] give him a nice welcome.

(Applause.)

MR. STONER: Thank you, Norton. Town of white people, Mr. Norton has already covered much of the subject of whether we white people are going to accept federal money in return for sacrificing our children in this school. Now, in the Supreme Court decision of 1964, that due stacked Supreme Court, only went too far and violated the Constitution of the United States by reversing earlier cases but they only said that no state could maintain forcibly by law a segregated separated school system. They did not say that any state or any school board has to force white children to go to school with niggers. The Supreme Court did not say that. Now they come along under the recent Civil Rights Act of 1964, officially call that Civil Rights Act of 1963, but was modified in 1964,

and under those federal guide lines they are now trying to tell every school board in the United States that if they want [Tr. 16] federal money, which is our money in the first place, that we must have in every school a proportion of the niggers race in proportion to the white race.

Now under the Supreme Court Decision of 1964 that is not required. But with these federal guide lines that are going into effect now and schools (inaudible) some places in the south in August, more will open in September. The Department of Health, Education and Welfare and the Public Education, the Federal Education Commissioner is ordering every school board and district in the south to either have a percentage of niggers in the school in proportion to the population or else federal aid will be cut off. Now it is very simple. Most of our schools are financed mainly by tax money from state and local taxes and federal aid in most places is only a drop in the bucket and I am willing to tell the federal government to take all of their federal aid and throw it in the Chesapeake Bay rather than send one of my [Tr. 17] children to school with niggers, now or any other time.

(Applause.)

All we have to do is to refuse that federal aid money for our schools so that we will not have our schools flooded with niggers who will be in there mixing with our little white children. Not only are they trying to force more niggers into our white schools under these federal guide lines, they say that more nigger teachers must be employed, nigger teachers must be employed to teach white children. Now I would like to know how much English grammar or anything else a white child could possibly learn by going to a school where there's a nigger schoolteacher teaching that child. He would never learn how to use the English language. The Africans have been here for several hundred years and they haven't learned how to use it yet. And under those circumstances they don't have any business teaching anything to our white children.

And we will not have a nigger children teaching white — nigger [Tr. 18] schoolteachers teaching white children if we turn down the federal money, and that is very definite.

We must protect our white children in every way possible. And there is certainly no protection and no safety for any white child whenever he is in the same school with niggers. So lets turn down the federal money. Let's turn it down and tell them that we are not going to abide by the federal guide lines. And the law does not require us to abide by the federal guide lines unless we take the federal prize money. Now there are more than one way — there is more than one way to fight against regulations. The National States Rights Party advocates every legal, legitimate and political (inaudible) in the book to stop race-mixing. Remember, we are in a struggle for the preservation of our great white race and we must win. There is no reason why we should let a bunch of sell-out politicians and the black buck folk dictate to us white people any longer. It is time that we white people asserted white [Tr. 19] power. After all, this country was founded by white people and for white people and there is evidence of that. All you have to remember is that George Washington, Patrick Henry, Thomas Jefferson, and most of the men who led the fight to win our independence from England were slave owners. And when they wrote the Declaration of Independence and said that all men are created equal with certain inalienable rights, they were not talking about their slaves because they were property.

So our ancestors, our forefathers, who wrote the United States Constitution never intended to have black rule in this country. They never intended for free men to ever commit to race mixing, one way or another.

Now the National States Rights Party is a political party. In some parts of the country we run our white supremacy candidates on the general election

ballot and in other places we run in the democratic and republican primaries. We intend to gain political power and to repeal not only the Civil Rights [Tr. 20] Act of 1964 and the Civil Rights Act of 1965 but all of the Civil Rights Acts including the one that the distinguished Congress is now passing through. We do not intend to exist under the Constitution of the United States. We don't have to like what congress and Lyndon Baines Johnson, that bull face from Texas, are doing. We don't have to like it, we don't have to agree to it, and we have a constitutional right to advocate a change back to white rule and white supremacy. Now there are many legal things we can do.

The National States Rights Party now and always has advocated that white people hire white people only. We advocate Abraham Lincoln's plan of reselling all of the niggers back in Africa where they came from so that they can have a country of their own and let us white people have our country. We are supporting the historical and traditional American concept in our platform and our folder. If you want to see some of the literature of the National States Rights Party you can [Tr. 21] see it up here at this table to my right which explains what the National State Rights Party advocates in more detail than I can.

Now, in addition with this, (inaudible) nigger gain, political power because they divide us white people. Well, we are the kind of white people that are not willing to be divided over religion or anything else. The existence, the mere existence, of our white race is at stake right now. And always remember it doesn't make any difference how many civil rights bills they pass, it doesn't make any difference how much they surrender to Martin Lucifer Coon for (inaudible) black mob, they will still not be satisfied and they will come back crying for more and more. They want everything we have but we are not going to give it to them and any politician who thinks we are is a fool and he is riding to his own political oblivion because the white people, the white giant, in this country is

being forced into a corner and this white [Tr. 22] white giant is waking up and he's not going to be run over any more.

So I ask you if you employ anybody, look around and find some white people to do your work for you. Hire white people. And if you like your good old nigger mammy and think she's the best and you're in the country and you're soft-hearted, give her a one-way bus ticket to New York City because she can draw a much bigger welfare check up there than she can down here in Maryland. Now, so keep that in mind. If we only hire whites and we move the blacks out legally, in accordance with the law, up to New York or some place like that, we won't have niggers down here to mix up with.

So at this time I'll turn the mike over to Mr. Richard Norton.

(Applause.)

7:43 P.M.

MR. NORTON: Let me give you an idea of the type of thinking that controls the so-called civil rights movement [Tr. 23] in America. Three months ago, four now, since Baltimore City was going to be its 1966 primary target, its primary target. Listen to these words: This is going to affect you and it will seep right down to every community in Maryland, every community in America. At its first meeting Lincoln Lynch of New York City and I'm going to remind you Lincoln Lynch is a very small, nasty, blue-gulled, West Indian nigger who has only been a citizen for nine years, who stood up and said, "We are going to tear down your rotten society, white man." That's what he said, we are going to tear down the society. Understand, this is not a movement for civil rights, this is not a movement for equality, this movement, the nigger movement, is a revolutionary movement to change the complete structure of government in America and nothing else. It is a revolutionary

movement to change society because this black element is completely unable to adjust to the twentieth century technological society. In other words, the society is more complex, job [Tr. 24] requirements become higher, they can't make it. They can't make it. Therefore, they advocate the destruction of society. They advocate a guaranteed minimum wage out of your pocket. Understand that it's going to affect you and it's going to hit you.

Well, I think the most promising sign we have seen the last week the white people have had enough Martin Luther King bunch of niggers, communists, trying to march through a Polish Lutheranian district of Chicago. You know what happened? This white people rose up, kicked hell out of the niggers, burned thirty-two cars, Martin Luther King says he's going back today. I hope he makes it; I hope he makes it. Just tell you after those tough Chicago Poles sat around all afternoon drinking beer it might get pretty rough for him.

Say, listen, I talked around here tonight. I found out the head of the school system is a man by the name of Sam Bond. Am I right? John Bond, pardon me, John Bond. This is [Tr. 25] your man. Now he doesn't know what you are thinking unless you talk to him. You can call this man John Bond on the phone, you can write him a letter, you can buttonhole him on the street, you can say, "Hey, John, let's stop it." Unless you create pressure on him, he will have no choice but to give in to the NAACP. And I am again going to remind you that you people don't know what terror in school is, what terror exists until it happens. The Baltimore City school system is a nightmare. Teachers are resigning faster than they can replace them. They can't replace them, they are refusing to teach. Policemen have to patrol the schools, little girls are having their blouses ripped off, there are sexual assaults on the playground, the educational level is down, down, down. Little white kids are walking out there and one time they grabbed

and shaken down and say, "Look, white boy, you give me five cents or I am going to beat you up." What are you going to do? The teachers can't be everywhere.

[Tr. 26] If you give them the first opening wedge, you give the first inch, they will open this thing up like a floodgate. There's no stopping it then. The only thing you would be able to do is take money out of your pocket for family and go to private school. The simple fact of the matter is there are 180 million white people in America. Just think of it. A hundred eighty million white people. In a given moment if all of us would put our hands up and say, "Hell, no, we don't want anymore, stop the whole thing!" Nobody can stop it. LBJ can't stop it, the Supreme Court can't stop it, nobody can. We are the government. This is the battle for (inaudible) race, the battle for your family, your family's security, your family's safety, the battle for a good school system. It's a battle to preserve our constitutional form of government. The only thing I can say is organize intelligently, fight intelligently, you're going to win every time. Nobody can't stop you.

[Tr. 27] Now you've heard a lot in the newspapers about a very controversial man in Baltimore. In fact, the State's Attorney in Baltimore called him our celebrity, Reverend Connie Lynch. He came to Baltimore and he has been branded as a racist reverend and all this sort of thing.

But I will say one thing for our rallies in Baltimore City, I think LBJ and a lot of politicians just (inaudible) love niggers. Oh, they're crazy about niggers. Everybody loves niggers until they have to be around niggers.

Well, let me tell you last Thursday night in Baltimore City two thousand people stood out there in front of our speakers platform and said they didn't like niggers and it certainly shook up the political structure of Baltimore City. They had to go to court

to stop him. Now they are going to stop us for a while.

We know the feelings of people. We watch them for three years building in this country. This country, according [Tr. 28] to the Newsweek magazine, is probably heading for mass racial violence — two years, three years, nobody can stop it. We can't stop it and LBJ can't stop it, niggers can't stop it.

We are going to ask you to be prepared for it. In a national newspaper this week it was reported that Baltimore City the last ten days that the instigators of the Cleveland nigger uprising had arrived in the city. The police force were on edge, very much on edge. They created all sorts of plans to combat this. I have nothing but respect for the Baltimore City police force. However, five hundred or six hundred policemen cannot stop a revolution.

We always urge white people to get their gun, always have a gun, know how to use it, always have a good supply of ammunition. I will tell you, friends, you are going to have to use it. It's no use hiding; you can't bury your head in the sand like an ostrich. The problems aren't going to go away. The time is come — you are going to have to stand up [Tr. 29] and face it. You are going to have to face it.

Now, listen, here comes Connie Lynch up here, the Reverend Connie Lynch, who is a fulltime organizer for the National States Rights Party. Born in Texas, spends a lot of time in California and travels all over the country organizing white people. They have said a lot of nasty things about Connie this last week. Let's give him a big hand. What do you say?

(Applause.)

7:50 P.M.

MR. NORTON: One further announcement. One further announcement. We have to let out such a big

hue and cry that Mr. Bond, the school commissioners, and Worcester politicians hear it. Now we didn't have much notice of this meeting tonight — about four hours. I want you to go home and be back here at the same place tomorrow night, bring every friend you have, bring your relatives, and bring your mother-in-law, too.

(Laughter.)

[Tr. 30] But come on back 7 o'clock tomorrow night. We're going to take it easy tonight — we don't want any heart attacks out there. And tomorrow night I want you people really hollering. No violence, just hollering. We want hollering so loud LBJ is going to hear it. Mayor McKeldin heard it in Baltimore. I understand pulled him half way out of bed.

All right. A big hand for Connie Lynch. Come on, Connie.

(Applause.)

MR. LYNCH: Thank you, Dick. Ladies and gentlemen, members of the white race, we greet you in the name of Jesus Christ. To all of the enemies of our republic, our Constitution, and our white race, we just warn you we are, remember, 145 million strong. This great white giant in America now flexing his muscles and beginning to awaken. And as he awakens he finds out as he looks around it appears that he's had a terrible nightmare. But then as he takes a little closer notice he finds out it isn't a nightmare at all. All it is is a [Tr. 31] bunch of no good, rotten, yellow-belled, sell-out, (inaudible) politicians on the top level of government, Federal, State, County, and city level. Now, politicians don't like for me to talk like this. I think maybe you have read the little book where it has the title, "None Dare Call it Treason". Well, you can just now forget that little book. That happens to be someone that doesn't mind calling it treason.

And when I point out sections of the Constitution of these United States and how they violated from the

highest office of this great republic of ours, the president right on down to many congressmen and senators and the extra divine 10 years old stooges on the Supreme Court bench that has just recorded the people and the right that is the Constitution, that ruling, that resents every traditional ruling and past ruling of the Supreme Court decision, relegates constitutional rights it's education of the State of the Union.

And remember, ladies and gentlemen, this Constitution [Tr. 32] these civil rights, were written by our ancestors. I remember listening to the commentator as he interviewed a member of the nigger race and asked them the question. And this here nigger said, "I don't know nothing about Africans, the only thing I knowed is our forefathers wrote the Constitution." Now I would like, just kindly, for some damn nigger to show me some of their ancestors in the Declaration of Independence or the writing of the Bill of Rights of the Constitution of these United States of America.

Everyone knows that every great nation and every nation of any culture or special element of government has based that government upon the teaching of the bible and these are members of righteous indignation that take up such household in the earth and they are not kinsmen to all these niggers, asiatic-oriental scalawags or what have you.

And these species, these incarnate devils that call themselves Jews are no part of that family. They are not the [Tr. 33] peoples of the bible. They're kinship, they're lucifer children and Jesus Christ can't claim he told them they weren't.

Now I don't listen to one politician of one of the counties of Maryland since I came here that they don't want this man, this fellow, from Texas that calls himself The Reverend Charles Lynch. We know this man they refer to as a rabble-rouser, a radical, (inaudible) because we do not want him and called him a colored citizen.

Of course these damn rotten politicians don't care anything about us white folks for the last fifteen years and (inaudible) million solid black mobs and the continual raise of and screaming, "Black power, Black Power."

Oh, sure, philosophically the educators held them in their posts by the newsreel. What do you mean by this?

Oh, we don't mean no violence whatsoever. We just don't mean violence. We just mean we going to rise up and take over. Power, Political Power, rule togetherness.

[Tr. 34] Let me tell you something — I happen to be one member of the white race and a born citizen of these United States of America. And as long as I live and breathe and breath is in my body, and blood runs through my veins, this great republic of ours and this great beautiful country of ours is not going to be turned into a damn black (inaudible) like Africa by these black (inaudible). How do you feel about ala that?

(Applause.)

They say I am (inaudible) colored folk but I tell you white people — every time you call a nigger a colored person, you are apologizing to them because they're black. I got nothing to do with the fact they're black. I'll tell you what made them black. Their daddy and mammy was black.

(Laughter.)

And their grandpappy and grandmammy was black. When a person, an anonymous phone caller, called me up and said, "Brother, why can you talk like this — only for the grace of [Tr. 35] God you might have been a nigger or Jew." Ain't that stupid? And I answered as always, "Sir, it wasn't by the grace of God, I'm telling you the reason I'm white. I'm white because my father was white, my mother was white, and all my ancestors was white all the way back to

the first white man and white woman that came into this world, Mr. and Mrs. Adam." The people that all the ancestors and all the custodians and the offsprings of the custodians of all the Old and of the New Testament of which our ancestors wrote. So, the reason I'm white, my parents are white. Now if I had had black parents, I'd have been black. If my parents had been a rattlesnake, I'd have been a rattlesnake. And I'll tell you something else — that no other race of people ever descended from Adam and Eve. One of the bodies of biological law and some way or the other cause a white boy and a white girl making a white man and a white woman if they were put together and no other race there with them to cause a million aeons from now they [Tr. 36] would still produce white children. It's simple. (Inaudible) If you put lima beans in a field, nail a fence around it, don't let blackeye peas or some other foreign crap get in there, a million years from now you'll still have lima beans. And if you let any blackeye peas get in there that's what's going to happen.

Now these theologians across the country know that the bible is very strong when it comes to segregation. Yes, they run around here crying, "Brother, brother." After a while one of them comes says "Don't you know I got a lot of good colored kinfolk?" You might have but I don't. Any time a white man talks like that, I say he ought to go back and examine his ancestors. How do you folks feel about that, huh?

VOICES: Yea, yea.

MR. LYNCH: If you are not sure you're white, then examine your ancestors. Find out. I'm speaking the kind of language that people can understand. Very definite and very [Tr. 37] plain.

Now — first of all, when I charge these politicians with being guilty of treason — you remember a few short years ago when there was an invasion of one of the States of the Union, the State of Arkansas, when the white people down there didn't think they'd ever

have a school system — of keeping their white schools white and black schools — and schools for black.

Now only the Supreme Court reversed the decision. They added to the unconstitution of the half-segregated schools. All the bald-headed (inaudible) kites that happened to occupy the office of the President at that time (inaudible) to the rest of the Jewish gang in Washington, they went out and turned the bayonets of our soliders on our white boys and white girls to force them against their will to kill the lying beasts, black varmints, a race of people that knows no culture, no civilization outside of their inflamed (inaudible) their association with the white race.

[Tr. 38]. Ladies and gentlemen, whether we bow to this tyrannizism whether we allow ourselves to submit to all this kind of foolishness, and all this kind of treason and do nothing about it to defend our constitution from all of its enemies, whether they be powers or dynasty — ah, here's what happened. Federal government were content to put an end to these sovereign states at Arkansas. Now it was up to the Supreme Court to decide, to make a decision whether Federal government, President of States of the Union and I want every person to hear what I've got to say — because you don't have to be a lawyer or a rabbi to understand the simple language of the Constitution — Here's exactly what the Constitution of the United States says in relation to education. First of all, those powers — and listen to this — those powers not granted to the Federal government already stipulated in the Constitution is to be referred to the State and to the peoples respectively. Now — in the field of education from this nine stooges, these nine [Tr. 39] traitors on the Supreme bench, swore to defend the Constitution haven't they ruled and have to rule whether federal government purges the States of Arkansas (inaudible) State of Union, and they went to their Constitution to find out and they settled the question — they found the federal government has no authority in the field of education. Therefore, they

would have had to rule that the Constitution guarantees the State of Arkansas and every other State of the Union the right to regulate education as they saw fit. So here was a direct, open, complete act of treason.

Now all you good white people out there, every one of you (inaudible) and the responsibility rests upon us. It doesn't rest upon our youth. Everyone of us has sworn to defend the Constitution. That means you. That means myself. We swore to defend it against its enemies, foreign and domestic. You know what every white person in America should have done when that Supreme Court refused to rule in favor of the [Tr. 40] Constitution? They should have been impeached immediately. They should have been tried, convicted and hanged by — remember, the penalty for treason is death. And it's in the Constitution. Let all of the rascals and the scalawags burn and have nightmares — but as sure as we are here tonight, this great white giant is going to wake up and he's going to gather himself the devil, he's going to take the traitors and (inaudible) their oath of office and community acts of treason and there's going to be more traitors hanged and executed here in America than there ever has been in any other country. And how do you feel about that, huh?

(Applause.)

Now let me tell you something. And someone says well we have to let lawyers interpret the Constitution. There is not one thing in the Constitution that if anybody in authority can interpret the Constitution, It has been a guiding light that has guided the free people, white people, to create one [Tr. 41] of the greatest documents and the greatest — and promoted and created one of the most productive countries in the world under its guiding light.

The Bill of Rights is very simple. Now you can hear all across the country as they scream and politics ignored it again and again. They are seeking to

pass no gun right law over in Texas just because of a gun fight where something happened to him and he shot some white folks. And now they say we're going to have to pass some kind of law. Remember, now remember, in the Bill of Rights, the second amendment to the Constitution, tells us to remember that there is not to be any law that can infringe on the rights of the citizens to bear arms to defend themselves.

You know why they want to prey upon the sympathy of the people when something like this happens? Because they want to take guns away from the white people so they can set up world wide police force and force the white people to a [Tr. 42] rule of tyranny, to force our character to yield to the mongrelization of race mixing and destroy the white race, to (inaudible) God's plan and purpose. And a town this great, as long as country and congress of America that we know tonight (inaudible) back into something like it is in Africa where the white man is now found himself there.

Let me remind you that there are white people that are not going to stand for this. Now you know why they brought a charge against me up in Baltimore by speaking to white people? Simply because they feel that anybody that speaks for the white people has to be stopped.

Now when the niggers come to town along with their outside gangs and agitators from Lucifer Coon's (inaudible) and all the rest of the gang of agitators when they came to Baltimore, the Mayor of that there city went down and gave a donation to them in their noble act of race mixing and forcing (inaudible) against the will of every white folk in every part [Tr. 43] in our society. And he also gave a key to the City to them. Oh, white people stay home and leave the niggers alone. When they use one of the parks down there, the white people are refused to be allowed to go down there — they call it afraid it will cause trouble.

But when we had a meeting, a permit to hold a meeting of the party, white people, America's States Rights Party, CORE — some of the CORE members some of the happy white and black, came down and began to curse and to disturb our audiences. Policemen didn't remove them. After they started and some of the white people got mad and were going to stop them but it was our meeting and anybody that — anyone that disturbed our meeting should have been taken and arrested by the right to hold peaceful assembly and this particular right is constitutional.

And God bless your heart, we are going to continue to speak for white America and white people all across this nation. [Tr. 44] And we're not going to stop with just one or two speeches, we're going to be in Court Monday and again we're going to attack in the courts the illegality of passing these unconstitutional and a, and injunctions against the white people while the niggers and they said even — remember they interpret this the same — the white folks couldn't even picket but while the white folk can't picket, the niggers are picketing, always picketing. Why are they picketing? They're demanding to move into white communities. Now there's not a white personality — there's not a white person anywhere that wants niggers to move into their white communities.

Niggers, I've heard them to say that we can't go to a certain (inaudible) and go out and we can't get a house to rent. You could get a house to rent if you go down to nigger town, to nigger town. What the hell do you want to go out and try to force the white people to let you in their communities. If any white person wants to live down with the niggers, it's [Tr. 45] perfectly all right with me but he better go down there and stay there. We don't want him back in our society. How do you folks feel about it out there, huh?

(Applause.)

All right. All right. Let me tell you — all you have to do tonight — listen to me — this is a republic, a government by the people and for the people. What in? Those that rule must rule according to the will of those that are ruled. Those that govern must govern according to the will of those that are governed.

Now tell you what you do white America in every state of the United States tonight — if they would give the nation of white people the right to vote tonight if they wanted any type of integration, it would be voted down overwhelmingly and they know damn well it would. Why it's been proven from east to west, everywhere, in every community wherever they permitted it.

[Tr. 46] Now — in California they passed a law out there by a nigger congressman called by the name of Rumpus, called the Rumpus Act. And this Rumpus Act said that white people, if they had any property, had to sell it to niggers. If they wanted to they couldn't refuse to rent, or sell, or lease. Well, the white people, white real estate men, put it on the ballot — it was last year, in 1965 — when it happened, they put it on the ballot, let the white people vote. It's called Proposition 14. Now Proposition 14 meant that it would give every businessman the right to sell, refuse to sell, lease, refuse to lease, rent, refuse to rent, to anybody that they wanted to, and it passed overwhelmingly. Why the white people let everybody and all the politicians know and all America, in California the (inaudible) in our communities.

Now, you know what happened? Just in 1966 a few weeks ago the California Jew packed Supreme Court ruled that all the people in California to be unconstitutional. Now how about [Tr. 47] that? Think that one over for a few minutes. Just like they ruled everything else. Sometimes someone will say to me, "Well, after all since the Supreme Court passes upon something becomes a law." Why in the hell did

this bunch of rotten, no good gangsters lodge in political arenas and lawyers just to have the audacity to get up and say to you — so damn dumb that we didn't know something about the Constitution of the United States. Hell, I say absolutely that whenever they make a decision that this is law. Now they settled questions of law according to the Constitution, being guided by the Constitution. But they haven't been guided by the Constitution since 1964. They've been guided by the Charter of the United Nations and the world government that hasn't any non-discrimination law. And imagine trying to pass a law — listen — I would like to challenge all the soberness of every white person listening to me tonight. Imagine, just imagine, trying to pass a law that would tell us white people that we couldn't [Tr. 48] discriminate against the niggers. (Inaudible) the niggers discriminate against me; wouldn't you? I don't want no nigger to have no right to discriminate against me. I want you white people out there, if you want to discriminate against communists, I will fight for the right for you to have that privilege and that right. Now remember our white people to be told they can't discriminate against another race is absolutely without any question unlawful, unconstitutional, and anyone that passes a law imposes upon the people, have violated the Constitution, they have betrayed their oath of office and the penalty is death. They should be impeached (inaudible) office, they should be tried, convicted and executed according to the Constitution of the United States of America.

I admit they don't like to hear somebody speak like this for white folk and they like to hear the niggers run around all over the country, they like to hear the nigger voice say, "Non-violence." Over in Chicago Lucifer Coon just [Tr. 49] went over there, a non-violence agitator.

But brother, let me tell you something. There's a hell of a lot of violence going on over there. But they haven't called it coon (inaudible), they haven't called

it (inaudible) race riot. Well — certainly — it was the niggers that rioted.

(Inaudible) not long ago in Los Angeles, all the nigger agitators were there at once — Let me play it back — all of them was here. The only reason there never has been any trouble, in general, the white people have been told to go home — submit to their cruel imperity. When the niggers come to town, when the niggers get in the streets, you folks go home, stay away, let them march, let them parade. Whenever they make demands into our white society, when they say they're going to invade our white communities, we are told we can't do anything about it — they have a right to come into your communities. But they're coming in there non-violently. Reminds me of someone coming to my house, knocking on my door, [Tr. 50] saying, "Now look-a-here, I'm coming into your house, but I'm not coming in there violently; I'm coming in with a non-violent manner." Then when he comes in he says, "Now I see your wife there, non-violently I want your wife. And I see you got a beautiful daughter over here — with no violence, but non-violently I want your wife."

So they always go around asking everybody — first thing the news media — and these damn nigger-babies threaten to call the FBI, Federal Bureau of Investigation comes down and says that you don't believe in violence. And that simply means, needless to say, you won't do nothing no matter how much they invade our territory. It matters not how much they come into our white communities, it matters not how much they impose on us, it's all right to disagree with us but if we do anything, then we are called the trouble makers. Well, I've got an answer to it tonight. I'm willing now and I'll be willing tomorrow and I'll always be willing to fight. Yes, hell yes, [Tr. 51] any way it takes to fight to stop this invasion of our white communities. How do you white folks feel about it out there, huh?

(Applause.)

Now if I had 145 million white people under my voice tonight, the greatest majority of those white people also would say the very same thing.

But so far they have taxed the white people till they have to work almost seven days a week, husband and the wife, around the clock. They can't go out and demonstrate because they got to make a living for their families or make demands on city hall. So these tax money from the white people are taken to pay these niggers welfare — That welfare — pay these non-married nigger women to go out here and produce illegitimate kids, pay them well for that, while they all go down here and march and those niggers that march across the country and march in our white society paid a salary by the [Tr. 52] tax money of the white people by the no good, rotten politicians that illegally tax the white people and taken their money (inaudible) and a home to force a black mob into a white community.

Now ladies and gentlemen, they call me a rabble-rouser. I want to clarify something to you (inaudible) a man that inspires white people. We deny that the good hard-working white people which they call the rabbles are what they call the scum of the earth.

I notice this Saturday's writers — I hope any member of the news media will listen to this tonight. Maybe if you got a damn conscience it will wake you up a little bit — always go back to that whenever they refer to anyone being a member of the National States Rights Party especially sometime when they use the word Ku Klux Klan why they say all these are is just a bunch of laborers, bunch of service station operators. I suppose a service station operators, a white man, who is [Tr. 53] working hard to make a living for his family is no damn good because some of these no good Jew (inaudible) move me to point out the fact they're no good. I rather face the facts as they are.

I wonder how many of you — I wonder how many politicians and all the rest of the gang would like for all the service station attendants to go on a strike in the morning and go home and say get some gas in your car the best way you can.

Now I've been referred to as a (inaudible) because they think this is a slam to somebody. I've been referred to as an ex-lemon picker. Of course I usually answer them — I've picked lemons, I've picked cotton, I picked potatoes, I picked peas, I picked just about everything that can be picked but the thing that (inaudible). Now I'm beginning to pick these damned, no good kite hateing Jews and niggers and inform the white people to rise up and do something about it. (Inaudible) and the news media says that I — they say this fellow Lynch [Tr. 54] curses. I simply use some terms of profanity to describe — such as damn and hell to describe this rotten, no good bunch of yellow-bellied traitors in our government, Federal, State, County, and City.

Now if you was to sit down and listen to the preacher, he's very philosophical — a little bit tight — but he will use — something that's detestable to him or something that he deplores — he'll use the world damnable. Of course, that's wonderful, you know. But if I speak a little cowboy language so's the world can understand it and say "the damn thing" instead of saying "the damnable thing" — you see, Jesus Christ would make this kind of statement, "How, you generation of vipers, how can you escape the damnation of hell?"

Now the word damnation is simply the word damn means something that curses and, of course, hell — that's what if you taken one of the ways out of the vocabulary that modern preachers would be completely lost.

[Tr. 55] Now, ladies and gentlemen, members of the white race, we want to remind you now that it has been an honor to have been invited to your town. It's

a beautiful country. We enjoyed the beautiful scenes as we drove down through this part of Maryland. We have enjoyed all of our stay in your beautiful state. We've even enjoyed the wonderful response up in Baltimore. I'll tell you why the politicians got shook up up there — because white people were coming out in droves, they were being inspired, they were mad, and they understood and knew that if the white people is inspired and got (inaudible) faith, the white people has somebody taking their part, they understand and know that the white people will rise up just like they did over in Chicago — somebody said the white was just causing a lot of trouble.

I'll tell you why the white (inaudible). These niggers were marching in their white communities. They were marching in their little playland that they have down there in the [Tr. 56] white communities and the niggers were marching down there demanding that they move in their home, take over their car, their playland. So white people got (inaudible) up, went down there and kicked the living — chased them out of there, stoned their cars and a lot of other things.

You say, well, now, look-a-here, we can't have that — then kick the damn niggers out of our white communities then. Let them go back to their (inaudible) home and sit there. Don't let them come marching into our communities and then turn around and tell us we can't do anything about it. Because we can do something about it and we are going to do something about it.

And remember this, if you could stop Connie Lynch, stop the wave of a thousand just like me and if you could stop those thousand I could raise up ten thousand more just like me. There's no way to stop what God is doing. And God is inspiring these white people to rise up now and rally to save their [Tr. 57] country and to preserve their Constitution, and also to preserve the white race from the black cloud of racial fornication that is attempting to destroy our youth through mongrelization.

Now, ladies and gentlemen, I'm going to remind you that we'll be back, quickly, tomorrow evening at 7 o'clock. We want you to bring your friends out. Come on out here tomorrow evening. Don't beg them to come, challenge them to come.

Another thing I want to say, the National States Rights Party of which you heard so much news in the last few days is the only white man's political party in America. It is the third largest political party in America. It's the only white men's party that has written in it clearly, white supremacy, faith in God, absolute complete separation, geographically separation, of the black and white, resending of the niggers back in Africa, carrying out the purpose of our forefathers that wanted it written in the Constitution to stop these kite hating Jews to become citizens. We also plan [Tr. 58] to remove them out of our country and we're going to have a beautiful country when this is over with.

We (inaudible) to as we often say that there isn't a better white man's organization available and I have never found one, then we challenge all white people to unite under the banner of the National States Rights Party. We have applications, $8.00 is the price of the membership for one year and this includes (inaudible) issue of the most dynamic newspaper in the country called The Thunderbolt. This paper calls a nigger a nigger, a Jew a Jew, and calls (inaudible), wherever you find him. This is a paper and a publication of the white man's political organization that promises a hundred forty-five million white people rally under the banner and clean our land of all this scourge that threatens to pollute it and to destroy it.

We also have a youth movement here, just half price, for those I take from 13 to 19. We have a lot of youths [Tr. 59] here and we would like to invite all of you to come and investigate. And if you wish to take out applications, we have applications here and we

have those here that will help you fill out the application this evening.

Before I turn it back over to our State's Coordinator, let me say to all of you good white people, all members of this fine white community here, it's been a pleasure — we consider it an honor to have been invited to your city. We'll all be back with you again tomorrow evening and when we come, we come, remember, we come only to do one thing — to unite white people to stop this black invasion of our white society and we don't care who knows that. This is what we come for, this is what we are going to be doing wherever we are, whether it's — whether it's in Maryland or whether it's in Washington, whether it's in Georgia, or whether it's in California. It matters not from California to Maine, from the Canadian border to the Gulf of Mexico, the voice of freedom and the voice of the [Tr. 60] white people — I stand and say for God, for the white race, and for the country; I remain, sincerely your (inaudible).

Thank you and good evening.

(Applause.)

8:22 P.M.

MR. NORTON: The main thing, remember, remember, remember, put some pressure on Mr. Bond. Don't let him sell you out. You are the people that run this county. Don't back down. The people of this county stand up, the school board's gonna listen to you. Again, don't back down.

Remember, it was two summers ago all those nasty niggers marched down from Maryland State College, they sat down in the middle of the street, and they groaned. They were going to have a revolt. They scared the politicians; they scared that tired old man in Annapolis; in fact, they scared your State senator down here. Well, we aren't going to scare any more, we aren't going to run any more — last summer, Adam [Tr. 61] Clayton Powell, the nigger

congressman from Harlem, stood up and said, "We got the white man on the run." Well, personally this is one white man that's not going to run any more. We're gonna stop, we're gonna fight — and I'll tell you one thing, maybe we'll have to sit down in the middle of the street, we'll bring this whole damn program within one year to a crashing halt. We're going to beat them, we're going to beat them, we're going to beat them. We're going to work together They haven't got a chance. I'm going to tell you niggers out there now the best thing you can do is start taking reservations for Africa for you're finished. We don't need you. You're off, you're dead. Get ready to leave this country. Get ready to leave this country. You can leave a lot of ways — you can leave on a boat, you can leave running, you can bicycle, or you can leave in a box. This is a white man's country. Princess Anne is a white man's town. This is a white man's county.

[Tr. 62] Let's organize, let's hear a great human cry come up from the people and I guarantee you white folks out there you'll win every single political objective. Now I want everybody — again we challenge you to bring your friends back out tomorrow night. We're taking it easy tonight. We didn't want any heart attacks. An old lady ran up here, said we're terrible people. She ran back here behind this bush — I don't know — if there's a doctor in the house he'd better get back out there to give her a nitroglycerin pill. I don't think she's going to make it. Some young man ran around there, I think he's going to wet his pants.

Bring your friends back out here tomorrow night. We want a shout to come out of this town, a non-violet shout, that every local politician is going to hear. We want McKeldin to hear it, Governor Tawes, Congressman Morton and all the LBJ.

One thing — if you want to talk about membership, come on up here and talk to us all you pretty girls and lovely [Tr. 63] ladies and young men and old men, come on up here. We don't fight. Our

man here is going to say — I guess you all know him pretty well — young redhaired fellow. He has a reputation of being about the toughest nigger fighter on the eastern shore — I'm talking about Bob Hill — you all know him?

VOICE: Robert Hill.

MR. NORTON: All right. He's out here tonight. Stick with him. Listen to him. He knows what he's doing exactly. He's a one hundred percent white man. His wife (inaudible) little bit tonight but you go pat her on the back, tell her what a good man — you're proud of him standing up listening to all the FBI trash, and I say FBI trash, everybody running around here telling people they can't come to our meeting and calling us rabble-rousers.

Well, folks, we tell them to go to hell, go to hell. You white folks bring your friends, come back tomorrow night. Come up here and talk to us now — talk to Bob Taylor — he's [Tr. 64] right up there on the sidewalk. Come on back tomorrow night, let's raise a little bit of hell for the white race. Ready? Come on up here.

8:25 P.M.

(Music.)

(Thereupon, the meeting was concluded.)

* * * * *

[49]

[Caption omitted in Printing]

STATEMENT OF COSTS:

In Circuit Court:

Record	$ 15.00
Stenographer's costs	377.00

In Court of Appeals:

Filing Record on Appeal	$20.00
Printing Brief for Appellant	Costs not supplied
Reply Brief	
Portion of Record Extract — Appellant	
Appearance Fee — Appellant	10.00
Printing Brief for Appellee	81.61
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	10.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this seventh day of July, A.D. 1967.

/s/
Clerk of the Court of
Appeals of Maryland

As shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

[50]

IN THE COURT OF APPEALS
OF MARYLAND

September Term 1966

No. 525

JOSEPH CARROLL, et al.

v.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, et al.

Horney
Marbury
Barnes
McWilliams
Finan,
JJ.

Opinion by Finan, J.

Filed: June 7, 1967

This is an appeal by Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford, and the National State Rights Party, hereinafter referred to as NSRP, from the temporary order of August 7, 1966, and the interlocutory order of August 30, 1966, rendered by the Circuit Court for Somerset County, chancery division, at the instance of the appellees, the President and Commissioners of Princess Anne, the County Commissioners of Somerset County, and Mahlon Price and James E. Lauchner, individually, enjoining each of the appellants individually, as well as the NSRP, from holding rallies or participating in any public demonstrations in Somerset County for a period of ten months. The appel-

lants, thereafter, filed an immediate appeal from the various orders below to this Court.

The appellants, each of whom are members or officers of the NSRP, a white supremacist political organization, held what could be described as a public rally or meeting near the courthouse steps on August 6, 1966 at 7:00 p.m., in the Town of Princess Anne, in Somerset County, for the purpose of publicly advancing the tenets of their cause.

The community, or some members of it, were notified four hours in advance of the proposal to hold this meeting. Upon their arrival, the appellants commenced to hook up a public address system. At this time, the appellants were approached by Captain Paul J. Randall, Troop Commander of the State Police for the Eastern Shore District. One of the appellants, Joseph Carroll, Youth Director of the NSRP, together with J. B. Stoner, attorney for the organization, asked Captain Randall if there was any law prohibiting the appellants from setting up an amplifying device and holding a rally in front of the courthouse on Somerset Street. Captain Randall advised Mr. Carroll that no such law existed. Accordingly, the privilege of holding the rally was extended to the appellants within the ambit of Captain Randall's authority. Captain Randall did request that the speeches omit any mention of two pending rape cases involving Negro defendants and a white victim. Thereafter, the rally was commenced by the playing of a musical tape, capable of being heard for several blocks, to the repeated refrain: "Send the niggers north."

Princess Anne, population 1351 (948 white, 403 Negro) is the county seat of Somerset County, population 19,623 (12,315 white, 7,300 Negro). The county is sparsely settled, the majority of its inhabitants being farmers or watermen. Most of the time it is a tranquil community; however, in 1933 it was the scene of Maryland's last lynching. In 1964 the town was again the scene of serious racial disturbances during which time there were many demonstrations by stu-

dents of Maryland State College, located in the town with a predominantly Negro student body of 730. A large detachment of Maryland State Police were called at that time to quell the distrubance and the Troop Commander of the State Police was seriously injured. Concentrated sulphuric acid was indiscriminately thrown at the police. Princess Anne is 40 miles from Cambridge, county seat of Dorchester County, where civil disturbances required the presence of the Maryland National Guard for a period of over a year (1963-64). The appellants, the week previously, had been arrested for causing a race riot in Patterson Park, Baltimore, Maryland, which had been given full TV, radio and press coverage. It was not mere chance which brought the appellants to Princess Anne.

At 7:15 Joseph Carroll opened the rally with the announcement that this was a white rally, designed to carry forward the views of the white people organized to oppose black terror, the Communist conspiracy in the United States, unconstitutional injunctions against good white people, such as the appellants, the Negro power structure, a mongrelization of the races and integration of schools and housing. To prevent mongrelization, Carroll assured his audience that they intended to fight in the courts and in every legal manner through the political organization of the NSRP and that they had taken enough off of the "niggers" and enough off of "Martin Lucifer Coon."

The appellant, Richard Norton, leveled his sights at the school integration program. Under freedom of choice, according to Norton, a community was not forced to integrate its schools if it refused to accept, * * * "LBJ's Judas, thirty pieces of silver." The price of acceptance, continued Norton, would lead to rape and the "sacrifice of white blood" in our schools.

Norton lived up to the promise given Captain Randall that no mention would be made of the two pending rape cases involving Negro defendants and a white woman; however, with some relish he reminded the crowd about the 1933 lynching, saying:

"In 1933 a nigger grabbed a 75 year old white woman in this town and brutally raped her, brutally raped her. What did they do? Did the people go out and say that nigger was a victim of discrimination and that's why he raped her? No. Let me tell you what happened. I am not advocating this but I am just recounting a bit of history. Three thousand people from this town rose up, took that beast out and hung him. You know what the Baltimore papers said, you know what they said? They called it Eastern Shore barbarism, Eastern Shore barbarism. Now a lot of oldtimers here tonight remember the stickers you all had on your cars and windows, 'I am an Eastern Shore man and damn proud of it.' You folks proud of it?

"(Voices) Yeah, yeah.

On the integration of schools, Mr. Norton had this to say:

"The act, this is a political struggle, we're in. It's a struggle for survival. Don't think you have it bad down here with niggers. Really, it's not too bad yet. Come to Baltimore City, see what's happening to schools there. The school superintendent of Baltimore City, the excellent Dr. Brain, three years ago his daughter went to Western High School. A nigger girl took a coke bottle, smashed the bottom out, and gouged that poor child's face. Well, after that Dr. Brain resigned, gone to Portland, Oregon, so his daughter could have plastic surgery. Now these bootlickers and political vermin, some of these preachers will tell you they accept this, this is insanity. Don't accept it. Never accept it. Organize. Fight it. You'll win every single time. You want to fight? Come on, let's hear it. Want to fight?

"(Voices) Yeah, yeah."

On employment, Mr. Stoner stated:

> "If we only hire whites and we move the blacks out legally, in accordance with the law, up to New York or some place like that, we won't have niggers down here to mix up with."

Mr. Norton continuing on the theme of their Baltimore rally of the previous week, and the inevitable uprising of the whites, said:

> "Well, let me tell you last Thursday night in Baltimore City, two thousand people stood out there in front of our speakers' platform and said that they didn't like niggers and it certainly shook up the political structure of Baltimore City. They had to go to court to stop him. Now they are going to stop us for awhile.
>
> "We know the feelings of people. We watched them for three years building in this country. This country, according to Newsweek magazine, is probably heading for mass racial violence—two years, three years, nobody can stop it. We can't stop it, and LBJ can't stop it, niggers can't stop it.
>
> * * *
>
> "We also urge white people to get their gun, always have a gun, know how to use it, always have a good supply of ammunition. I will tell you, friends, you are going to have to use it. It's no use hiding; you can't bury your head in the sand like an ostrich. The problems aren't going to go away. The time is come — you are going to have to stand up and face it. You are going to have to face it.
>
> * * *
>
> "But come on back 7 o'clock tomorrow night. We're going to take it easy tonight — we don't want any heart attacks out there. And tomorrow night I want you people really hollering. No violence, just hollering. We want hollering so loud LBJ is going to hear

it. Mayor McKeldin heard it in Baltimore. I understand (sic) pulled him half way out of bed."

The next speaker was the star of the attraction. A self-styled sometime lemon picker from California called the Reverend Connie Lynch whose oratorical harangue in part follows:

"Everyone of us has sworn to defend the Constitution. That means you. That means myself. We swore to defend it against its enemies, foreign and domestic. You know what every white person in America should have done when that Supreme Court refused to rule in favor of the Constitution? [on school integration] They should have been impeached immediately. They should have been tried, convicted and hanged by — remember, the penalty for treason is death. * * *.

* * *

"Whenever they make demands into our white society, when they say they're going to invade our white communities, we are told we can't do anything about it — they have a right to come into your communities. But they are coming in there non-violently. Reminds me of someone coming to my house, knocking on my door, saying, 'Now look-a-here, I'm coming into your house, but I'm not coming in there violently; I'm coming in with a non-violent manner.' Then when he says, 'Now I see your wife there, non-violently I want your wife. And I see you got a beautiful daughter over here — with no violence, but non-violently I want your daughter.'

"Well, I've got an answer to it tonight. I'm willing now and I'll be willing tomorrow and I'll always be willing to fight. Yes, hell yes, any way it takes to fight to stop this invasion of our white communities. How do you white folks feel about it out there, huh?

"(Applause.)"

The rally lasted approximately an hour and one-half.

During the progress of the rally the crowd expanded from about fifty at the beginning to about one hundred and fifty to two hundred persons at the conclusion and about twenty-five percent were Negroes, most of whom stood on the fringe of the crowd. Captain Randall, prior to the beginning of the rally had called in about thirty-five state policemen and during the progress of the rally asked for, and received, about twenty-six additional men.

The Court has had the benefit of listening to the tape recording made at the rally, which was filed as an exhibit in the court below. Toward the end, Mr. Norton shouted remarks in crescendo and in an hysterical, high-pitched cadence directed the following diatribe to the Negroes standing on the fringe of the crowd:

> "Well, we aren't going to scare any more, we aren't going to run any more — last summer, Adam Clayton Powell, the nigger congressman from Harlem, stood up and said, 'we got the white man on the run.' Well, personally this is one white man that's not going to run any more. We're gonna stop, we're gonna fight — and I'll tell you one thing, maybe we'll have to sit down in the middle of the street, we'll bring this whole damn program within one year to a crashing halt. We're going to beat them, we're going to beat them, we're going to beat them. We're going to work together — they haven't got a chance. I'm going to tell you niggers out there now the best thing you can do is start taking reservations for Africa for you're finished. We don't need you. You're off, you're dead. Get ready to leave this country. Get ready to leave this country. You can leave a lot of ways — you

can leave on a boat, you can leave running, you can bicycle, or you can leave in a box. This is a white man's country. Princess Anne is a white man's town. This is a white man's country." (Emphasis supplied.)

The Court has reviewed the facts of this case in light of Cox v. Louisiana, 379 U.S. 536 (1965); Cooper v. Aaron, 358 U.S. 1 (1958); Beauharnis v. Illinois, 243 U.S. 250 (1952); Terminiello v. Chicago, 337 U.S. 1 (1949) Chaplinsky v. New Hampshire, 315 U.S. 568 (1942); Cantwell v. Connecticut, 310 U.S. 296 (1940); Schenck v. United States, 249 U.S. 47 (1919); and Rockwell v. Morris, 211 N.Y.S. 2d 25 (App. Div. 1961).

We think the lower court acted in the face of a clear and present danger in issuing the temporary restraining order, dated August 7, 1966, enjoining the appellants from holding rallies, "until the matter can be heard and determined in equity or for a period of ten days from the date hereof," and accordingly we affirm this action. We shall have more to say about the interlocutory injunction later in this opinion.

To elaborate at length on the cited authorities and their application to the case at bar, would be to write on a page of legal history already crowded. However, comment is necessary.

This Court is well aware that "Freedom of Speech," as guaranteed by the First Amendment of the Constitution of the United States is the cornerstone around which the house of government is built and without which other personal freedoms would atrophy.

However, as Justice Holmes pointed out in Schenck, supra, freedom of speech is not an absolute right, citing the example at p. 52 that: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." He gave us the "clear and present danger" doctrine.

The speeches delivered by the appellants must not be judged as they abstractly read or sound in the sequestered atmosphere of judicial chambers, but with the realization that they were, in the nature of a harangue, delivered in the humidity of a torrid August night from the courthouse steps of a county seat whose people were not strangers to racial violence.

Captain Randall, Corporal Chaffey of the State Police, and Mr. Dashiell, a commissioner of the Town of Princess Anne, all having witnessed previous racial disturbances in Princess Anne and Officer Tenney of the Baltimore County Police testified as to the heightened tension of the crowd as the rally concluded. Colonel Davidson, Chief of Operations of the State Police, testified that at the time of the hearing on the injunction, August 30, 1966, "a very tense atmosphere" still existed.

The Court is aware that these witnesses were members of law enforcement agencies and one a town commissioner and that we cannot let our free institutions be circumscribed by the criterion of a police state, as was said by Justice Black in his dissent in Feiner v. New York, 340 U.S. 315 (1951) (dissenting opinion at 340 U.S. 321). The Court also realizes that the State has the duty to provide safeguards for those who wish to publicly air their views. Nor, can the authorities rid themselves of an unpleasant task by the simple expediency of not letting malcontents or agitators meet. Yet, the testimony of these men, as to the temper of the community and the immensity of danger, cannot be discounted. They wore the mantle of authority and were charged with the onerous burden of preserving the peace. Theirs was the responsibility of providing protection, not only to those persons who might gather at a rally the following night or thereafter, and to the townspeople of Princess Anne, but to the speakers themselves.

The Maryland State Police have had much experience in recent months with "brinksmanship diplo-

macy," in handling racial meetings and calculating when the "brink" of peaceable exhortation has been reached. There are countless individuals who stand by ready to castigate when the protectors of the public safety miscalculate.

We must also look at the words of the speeches themselves, the common meaning of the words and the manner in which they were delivered. They do not represent an attempt on the part of those addressing the crowd at intellectual persuasion or an appeal to reason by championing a particular social, religious, racial or political philosophy. These were provocative gut speeches, interlaced with "fighting words," delivered in an inflammatory manner aimed at the raw emotions of the listeners. As Justice Frankfurter said in Drivers Union v. Meadowmoor Co., 312 U.S. 287, 293 (1941): "But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The instant setting was far more volatile than that found in Cantwell. The passages are more inflammatory than those of Feiner, Chaplinsky or Cox. The "fighting words" more identifiable as such than in Beauharnais or Chaplinsky.

In the instant case the remarks and epithets hurled directly at the Negroes on the fringe of the crowd were nothing less than an invitation to mutual violence, for which the opportunity was being set up for the following night.

Although the State has the duty to provide safeguards for those who wish to publicly air their views, we do not think this duty extends to providing a protected forum from which persons may taunt with "fighting words" those who otherwise would be law-abiding citizens.

Nor was this a case of prior restraint, as in Rockwell, supra. The rally was actually staged, the speak-

ers threw down the gauntlet by way of a challenge, particularly to the Negro segment of the community as to what might be expected the following night; at which rally they promised more of the same — only more vituperative, more vicious.

This is not a case where the speakers were restrained by direct police action. The restraint was not imposed upon the speakers until after the matter was given the disciplined review of the court.

We have stated that we are of the opinion that the court was correct in issuing its temporary order, dated August 7, 1966, restraining the defendants from holding rallies and meetings until the matter could be determined by a court of equity or for a period of ten days from the date of the issuance of the restraining order. However, we think the court erred in making its interlocutory order for a period of ten months. It is apparent that the lower court meant for its injunction to be coextensive with the academic year of Maryland State College, which was due to commence within a few days after the issuance of the interlocutory decree of August 30, 1966, and which would normally end in June of 1967. However, we think that the period of time was unreasonable and that it was arbitrary to assume that a clear and present danger of civil disturbance and riot would persist for ten months.

Temporary Order of August 7, 1966 Affirmed, Interlocutory Order of August 30, 1966 Reversed. Each Party to Pay Their Respective Costs.

[51]

STATE OF MARYLAND,
SOMERSET COUNTY, TO WIT:

I, I. Theodore Phoebus, Clerk of the Circuit Court for Somerset County, Maryland, do hereby certify that the aforegoing are copies of the entire record, excluding Memorandums filed by the Plaintiffs and the Defendants, and excluding Exhibit No. 1 being a tape recording and film, filed in the case of the President and Commissioners of Princess Anne, et als versus Joseph Carroll, et als, the same being No. 8338 Chancery Case in this Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the Seal of said Court this 14th day of August, 1967.

/s/ I. Theodore Phoebus
Clerk of the Circuit Court for Somerset County, State of Maryland.

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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 6

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, and the NATIONAL STATES RIGHTS PARTY,

Petitioners,

—v.—

THE PRESIDENT and COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

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TABLE OF CONTENTS

	PAGE
Citations to Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statement of Case	2
Reasons for Granting the Writ:	
I. The temporary injunction barring petitioners' participation in public meetings was a prior restraint on speech in violation of the First Amendment	8
II. The temporary injunction was an unconstitutional intrusion on free speech because no clear and present danger existed	11
III. This case is not moot	14
Conclusion	16

TABLE OF AUTHORITIES

Cases:

Bantam Books v. Sullivan, 372 U. S. 58 (1963) 8
Beauharnais v. Illinois, 243 U. S. 250 (1952) 12, 13
Burstyn v. Wilson, 343 U. S. 495 (1952) 8

PAGE

Carroll, et al. v. President and Commissioners of Princess Anne, 247 Md. 126 (1967) 1
Chaplinsky v. New Hampshire, 315 U. S. 568 (1942) 12, 13
Cox v. Louisiana, 379 U. S. 536 (1964) 11, 12

Edwards v. South Carolina, 372 U. S. 229 (1963) 11, 12

Fields v. Fairfield, 375 U. S. 248 (1963) 14
Fowler v. Rhode Island, 345 U. S. 67 (1953) 10
Freedman v. Maryland, 380 U. S. 51 (1965) 8

Garrison v. Louisiana, 379 U. S. 64 (1964) 13
Grosjean v. American Press Co., 297 U. S. 233 (1936) 8

Hague v. C. I. O., 307 U. S. 496 (1938) 8, 10

Jamison v. Texas, 318 U. S. 413 (1943) 10

Kunz v. New York, 340 U. S. 290 (1950) 9

Lovell v. Griffin, 303 U. S. 444 (1938) 10

Near v. Minnesota, 283 U. S. 697 (1930) 8, 9, 10
Niemotko v. Maryland, 340 U. S. 268 (1951) 10
Norton v. Ensor, 269 F. Supp. 533 (D. Md. 1967) 9

Rockwell v. Morris, 211 N. Y. S. 2d 25 (1961) 9

Schenck v. U. S., 249 U. S. 47 (1919) 13
Schneider v. Irvington, 309 U. S. 147 (1939) 10

Terminiello v. Chicago, 337 U. S. 1 (1948) 11, 12
Time, Inc. v. Hill, 385 U. S. 374 (1967) 13

PAGE

Walker v. Birmingham, 388 U. S. 307 (1967) 14

United States Constitution:

First Amendment 2, 8, 10, 13, 14, 15

Fourteenth Amendment 2

Statute:

28 U. S. C. §1257(3) 2

Other Authorities:

4 Blackstone's Commentaries 152 (Wendell's ed. 1850) 8

Cahn, The Predicament of Democratic Man 135-139 (1961) 13

Chafee, Government and Mass Communications 116-130 13

Clark, The Problem of Group Defamation, 13 Cleveland-Mar. L. Rev. 1 (1964) 13

Emerson, Towards a General Theory of the First Amendment, 72 Yale L. J. 877 (1963) 13

Kalven, The First Amendment and the Negro, Chap. 1 13

Konvitz, "Fundamental Liberties of a Free People" 184 (1957) 9

Reisman, Democracy and Defamation, 42 Col. L. Rev. 727 13

IN THE

Supreme Court of the United States

October Term, 1967

No. .....

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, and the NATIONAL STATES RIGHTS PARTY,

Petitioners,

—v.—

THE PRESIDENT and COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

Joseph Carroll, Richard Norton, J. B. Stoner, Charles Lynch, Robert Lyons, William Brailsford, and the National States Rights Party pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Maryland, entered in the above-entitled case on June 7, 1967.

Citations to Opinions Below

The opinion of the Court of Appeals of Maryland is reported in 247 Md. 126 (1967), and is printed in the Appendix, *infra*, pp. 1a-12a.

Jurisdiction

The judgment of the Court of Appeals of the State of Maryland was entered on June 7, 1967. On September 6, 1967 Mr. Justice Black extended the time within which to file this petition for certiorari until October 5, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. §1257 (3) since rights, privilege and immunities are claimed under the Constitution of the United States.

Questions Presented

1. Whether an *ex parte* temporary injunction barring petitioners from holding any public meetings for ten days was an invalid prior restraint in violation of the First and Fourteenth Amendments.

2. Whether the issuance of the *ex parte* temporary injunction was justified by the existence of a clear and present danger.

Statement of Case

Petitioners, members or officers of the National States Rights Party, a political organization, participated in an outdoor political meeting on August 6, 1966, in front of the courthouse in the town of Princess Anne, the county seat of Somerset County, Maryland (R.[1] 33, T.[2] 84). The rally continued from 7:00 P.M. to 8:25 P.M. (T. 45). No violence

[1] "R" refers to the certified record filed with the Clerk of the Court.

[2] "T" refers to the transcript of the hearing on the injunction which is part of the certified record but separately paginated.

occurred (T. 84), and no arrests were made (T. 47, 56). Near the end of the rally Richard Norton, one of the speakers, announced that another rally would be held by the Party on the following evening (TT.[3] 62-63).

On the following day, August 7, 1966, the President and Commissioners of the town of Princess Anne and the County of Somerset secured an *ex parte* injunction forbidding petitioners from holding another meeting for ten days until the matter could be heard in the Circuit Court for Somerset County (T. 8). The order instructed petitioners to appear on August 17, 1966, to show cause why they should not be permanently enjoined from holding such rallies in Princess Anne (R. 7-8).

At the rally of August 6, 1966,[4] the aims and tenets of the National States Rights Party were described by Party attorney, J. B. Stoner (TT. 14), as follows (TT. 19-20):

> Now the National States Rights Party is a political party. In some parts of the country we run our white supremacy candidates on the general election ballot and in other places we run in the Democratic and Republican primaries. We intend to gain political power and to repeal not only the Civil Rights Act of 1965 but all of the Civil Rights Acts including the one that the distinguished Congress is now passing through.

In keeping with these aims, the speakers variously exhorted their hearers to "organize [to] win every single

[3] "TT" refers to the transcript of the speeches presented at the meeting of August 6, 1966, which is part of the certified record but separately paginated.

[4] The entire meeting was recorded by state officers. The tape was introduced at the August 17, 1966 hearing (T. 85).

political objective" (TT. 62) and to "organize intelligently, fight intelligently" (TT. 26). Governor Agnew and "Joe Alton . . . down in Annarundel County" were specifically criticized for their plans regarding integration (TT. 8-9). The Party intended to "fight in the Courts every legal way we can to smash these vermin, to smash them (sic) (inaudible) plan to assimilate the white race" (TT. 8). They vowed to "continue to speak for white America" (TT. 43), and beyond "one or two speeches, we're going to be in Court Monday" to attack as illegal injunctions against their picketing while courts nevertheless allow Negroes to picket (TT. 44). They counterposed "white power" to "black power" (TT. 18-19), and told the crowd that "The National States Rights Party advocates every legal, legitimate and political (inaudible) in the book to stop race-mixing" (TT. 18).

During the rally the Party informed the audience how to become members (TT. 9, 58, 62). Party literature was also distributed (TT. 20-21).

Party speakers discussed the white supremacist view on several political issues, including school integration (TT. 10, 15), federal aid (TT. 11, 17, 19), federal school desegregation guidelines (TT. 16, 18), the Rumford Fair Housing Act in California (TT. 46), and the Negro movement and its demands (TT. 23, 24, 33), all of which were denounced. In particular the speakers emphasized the local political situation, several times exhorting the crowd to "phone . . . write, [and] buttonhole John Bond," the head of the [local] school system, to bring political pressure on him to the end that local schools not be integrated (TT. 24-25, 29, 60). Their advice to Negroes was to "start taking reservations for Africa," where they should migrate (TT. 61).

Frankly advocating the doctrine of white supremacy, the speakers nevertheless expressly cautioned their audience against resort to violence, for "they think we advocate it, we don't. This is a political battle pure and simple, that's all it is" (TT. 14). They urged: "I want you people really hollering. No violence, just hollering" (TT. 30). They advocated "a non-violent shout, that every local politician is going to hear" (TT. 62).

Each speaker in turn referred to Negroes as "niggers" (T. 36). Rev. Charles (Connie) Lynch (TT. 33), one of the rally speakers, explained that "every time you call a nigger a colored person, you are apologizing to them because they're black" (TT. 34). Jews were also vilified (TT. 32-33, 37) and the United States Supreme Court caustically criticized (TT. 31, 38-39).

At the August 17th hearing, the County Attorney informed the Court that his witnesses would testify about "what might occur should these demonstrations, rallies, and speeches be allowed to continue" (T. 7). The testimony at the hearing showed that about 25% of the maximum audience of 200 were Negroes (T. 36, 37, 54). According to the testimony of a plainclothes policeman assigned to the rally area, the Negroes remained apart from the whites and "did not mingle among the other groups" (T. 55). Though the Negroes were visibly "disturbed and angry," they "stayed over on this side of the street" (T. 55). There was tension among the whites, but there was no breach of the peace, cause for arrests, or need for police intervention (T. 48, 56, 58). About 60 police officers, including reenforcements from other counties, were on hand (T. 38).

Over the objection of petitioners' counsel, the trial court admitted evidence of unrest and violence in Somerset County in February, 1964, nearly three years earlier, during mass civil rights demonstrations by students at a nearby Negro college demanding that public accommodations be open to all regardless of race (T. 13-25, 34). At that time the violence had been preceded by talk of "murder" and "killing" in "many sections of town" (T. 15). When a disturbance involving several hundred Negro students and local whites occurred, local police were able to bring it under control without reenforcements (T. 16, 22). Neither the National States Rights Party nor the individual petitioners were in Somerset during the 1964 incidents (T. 20). The college was not in session when petitioners spoke on August 6, 1966 (T. 60). Since the February 1964 demonstrations, there had been little racial tension in the town (T. 69). On cross-examination, an officer testified that race relations before the incidents of February 1964, and thereafter had been good (T. 56-57).

Paul J. Randall, a captain in the Maryland State police, testified that before the rally, one of the participants, Joseph Carroll, inquired about the local law regarding the use of a public address system and the sponsorship of a rally on the street (T. 33). Captain Randall informed Carroll that the town manager had said that no local ordinance prevented the rally (T. 34). Captain Randall requested Carroll and Stoner not to mention two pending court cases in which Negroes were accused of raping whites (T. 43). He testified that in fact no mention of these cases was made (T. 44). Mention was made of a rape of a seventy-six year old woman thirty-three years ago and of the lynching that followed, but the speaker said: "I am not

advocating this but I am just recounting a bit of history" (TT. 12). The rally ended ten minutes after a prearranged signal passed from Captain Randall to Carroll when Captain Randall nodded to Carroll that "tension was building" (R. 48).

On August 30, 1966, the Circuit Court for Somerset County issued an order barring the individual petitioners from "holding or sponsoring or speaking" at any public gathering or in any public place on any subject for ten months (R. 36). The Party was enjoined for ten months from participating in public gatherings at which "racial or religious epithets" or language expected to lead to rioting or disorder were used (R. 36; App., *infra*, pp. 13a-17a).

On June 7, 1967 the Court of Appeals of Maryland affirmed the temporary order of August 7, 1966 but reversed the interlocutory order of August 30, 1966, holding that "the period of time was unreasonable and that it was arbitrary to assume that a clear and present danger of a civil disturbance and riot would persist for ten months" (R. 50-51; App., *infra*, p. 12a).

The constitutional questions presented were raised by petitioners at trial (T. 8) and explicitly rejected by the trial court in its opinion (R. 34-35; App., *infra*, pp. 13a-17a). Petitioners again raised the constitutional issues in their Motion to Shorten Time for Transmission of Record (R. 44). The same questions were raised on appeal and treated fully on the merits in the opinion of the court below (R. 50; App., *infra*, pp. 1a-12a).

Reasons for Granting the Writ

I.

The temporary injunction barring petitioners' participation in public meetings was a prior restraint on speech in violation of the First Amendment.

Petitioners' August 6, 1966 meeting did not result in the arrest or prosecution of any of its participants—for no crime was committed. Nonetheless, respondents determined to prohibit petitioners from conducting other meetings on the ground that "if the defendants are permitted to carry on these harangues and incendiary rallies . . . the whole of Somerset County will be in danger of riots . . ." (R. 6), and secured the *ex parte* injunction at issue here. Respondents thus exercised the power to impose a prior restraint upon speech, a power which this Court has long condemned. *Near* v. *Minnesota*, 283 U. S. 697 (1930); *Hague* v. *C. I. O.*, 307 U. S. 496 (1938); *Bantam Books* v. *Sullivan*, 372 U. S. 58 (1963); *Freedman* v. *Maryland*, 380 U. S. 51 (1965). See 4 *Blackstone's Commentaries* 152 (Wendell's ed. 1850).

In *Near* v. *Minnesota*, *supra*, the State attorney sought to enjoin as a public nuisance a "malicious, scandalous and defamatory" publication. 283 U. S. at 703. But this Court rejected prior censorship where a remedy might later be pursued to punish an evil whose suppression in advance would involve a restriction on free expression. Cf. *Grosjean* v. *American Press Co.*, 297 U. S. 233 (1936); *Burstyn* v. *Wilson*, 343 U. S. 495 (1951); *Bantam Books* v. *Sullivan*, *supra*.

Kunz v. *New York*, 340 U. S. 290 (1950), specifically prohibits the prior restraint at issue here. Kunz was denied a permit to hold religious meetings "based on evidence that he had ridiculed and denounced other religious groups at his meetings." *Id.* at 292. This Court found that the court below had erred in relying on evidence that "appellant's religious meetings had, in the past, caused some disorder." *Id.* at 294. In the case at bar, the state's evidence is even more remote, for it relied on stale events in which petitioners were not even participants. As this Court said in *Kunz*: "There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence." *Ibid.* See Konvitz, *Fundamental Liberties of a Free People* 184 (1957).[5]

In *Rockwell* v. *Morris*, 211 N. Y. S. 2d 25, 32-33 (1961), the New York Court of Appeals, relying on *Near* and *Kunz*,

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[5] In a recent decision, the United States District Court, District of Maryland, required that a permit be issued to these petitioners to speak in Baltimore. *Norton* v. *Ensor*, 269 F. Supp. 533 (1967). There, as here, the denial of the permit was based on "previous activities of the applicants and the Party . . . [s]pecifically . . . a tape recording and films of the rallies. . . ." The Court found that:

> Defendant considers, and the Court agrees, that the evidence shows that speakers at those rallies incited persons in attendance to riot. Many participants in the rallies did riot, attacking Negroes who lived almost six blocks from the site of the rally. Photographs of such attacks were offered in evidence.
>
> Later in the summer a similar rally was held in Princess Anne, Somerset County, Maryland, where inflammatory speeches were made but violence was averted by the arrival of a large number of State Troopers. *Id.* at 536.

Nonetheless, the District Court held the relevant ordinance, in part, an "impermissible prior restraint upon plaintiffs' right of free speech and assembly," *id.* at 537, and ordered the permit to be issued.

reversed the denial of a park permit to George Lincoln Rockwell, late head of the American Nazi Party. The lower court had dismissed Rockwell's petition because it found that he was a "'self-confessed advocate of violence' and that if he spoke it was 'inevitable that public disorder and riot will result.'" *Id.* at 28. The Court of Appeals said:

> Only if Rockwell speaks criminally (or, perhaps, if it is established on a proper record, in that very rare case, that he will speak criminally, not because he once did, but that he will this time, and irreparable harm will ensue) can his right to speak be cut off. If he does not speak criminally, then, of course, his right to speak may not be cut off, no matter how offensive his speech may be to others. Instead, his right, and that of those who wish to listen to him, must be protected, no matter how unpleasant the assignment.

The fact that the ten day period was to allow for a "judicial remedy," does not cure the harm done to First Amendment rights by the prior restraint. *Cantwell* v. *Connecticut,* 310 U. S. 296, 306 (1940). The harm is the restraint itself. *Lovell* v. *Griffin,* 303 U. S. 444 (1938); *Hague* v. *C. I. O.,* 307 U. S. 496 (1939); *Schneider* v. *Irvington,* 309 U. S. 147 (1939); *Jamison* v. *Texas,* 318 U. S. 413 (1943); *Niemotko* v. *Maryland,* 340 U. S. 268 (1951); *Fowler* v. *Rhode Island,* 345 U. S. 67 (1953). This Court should reaffirm the principle that "subsequent punishment for such abuse as may exist is the appropriate remedy, consistent with constitutional privilege." *Near* v. *Minnesota, supra* at 720.

II.

The temporary injunction was an unconstitutional intrusion on free speech because no clear and present danger existed.

Terminiello v. *Chicago*, 337 U. S. 1 (1948), *Edwards* v. *South Carolina*, 372 U. S. 229 (1963), and *Cox* v. *Louisiana*, 379 U. S. 536 (1964), require that certiorari be granted because the decision of the court below, which justified the issuance of the *ex parte* injunction upon the existence of a clear and present danger (App., *infra*, p. 9a), is not in accord with these decisions.

Terminiello involved an advocate of racism and anti-Semitism in the post-war period when popular sensibilities were especially hostile to his views. There, a thousand persons had gathered "to protest against the meeting," and the police were not able to prevent several disturbances.[6] Terminiello was convicted of disorderly conduct. Reversing the conviction, this Court said:

> Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. 337 U. S. at 4.

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[6] Compare the extent of the actual disturbance in *Terminiello* to the facts of the case at bar. 337 U. S. at 14-15.

Petitioners, like Terminiello, belong to a controversial minority which believes that Negroes and Jews are responsible for society's ills. Like Terminiello they can expect to encounter hostile audiences and crowds. They must nonetheless be protected in their right to speak, no matter how controversial or provocative their beliefs may be.

Edwards and *Cox* also teach that neither the unpopularity of the speaker nor the hostility of the crowd can provide a constitutional basis for curtailing speech.

Edwards involved the denunciation of segregation in the South in 1961 which resulted in arrests for breach of the peace. This Court reversed the convictions, for, as in the case at bar, "There was no violence or threat of violence on [petitioners'] part, or on the part of any member of the crowd watching them. Police protection was 'ample.'" 372 U. S. at 236. In *Cox,* the racial issue had pitted two thousand angry Negro college students against a crowd of "'muttering' and 'grumbling' [white] onlookers." 379 U. S. at 543. This Court reversed Cox's conviction for disturbing the peace despite his advocacy of the then illegal action of sitting at segregated lunch counters and his advocacy of resistance to police orders. 379 U. S. at 542-543. Again this Court rested its reversal on *Terminiello.*

The Court below disregarded the *Terminiello* line of decisions, relying instead on *Chaplinsky* v. *New Hampshire,* 315 U. S. 568 (1942) and *Beauharnais* v. *Illinois,* 243 U. S. 250 (1952).

Though *Chaplinsky* carved out an area of speech embracing "face-to-face words plainly likely to cause a breach of the peace by the addressee, words whose speaking con-

stitutes a breach of the peace by the speaker," 315 U. S. at 573, the court below relied upon that decision to restrain a political speech to an audience of two hundred.

Reliance on *Beauharnais* v. *Illinois, supra,* is similarly misplaced in light of this Court's more recent decisions. As was said in *Time, Inc.* v. *Hill,* 385 U. S. 374, 390-391 (1967), ". . . the First Amendment principles pronounced in *New York Times* [have] guided our conclusions in First Amendment cases since 1964." Yet they provided no guide to the court below in this case. If the "epithet 'libel' " has assumed new meaning in our law, as *New York Times* and *Garrison* v. *Louisiana,* 379 U. S. 64 (1964) make clear, then the scope of *Beauharnais* requires fresh examination.[7]

Whatever the complexities of decisions affecting this area, it remains true that "the character of every act depends upon the circumstances in which it is done." *Schenck* v. *United States,* 249 U. S. 47, 52 (1919). In the First Amendment area this has meant that this Court considers cases "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open. . . ." *New York Times* v. *Sullivan, supra* at 701. Petitioners have insisted upon the most provocative exercise of their First Amendment

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[7] "Beauharnais v. Illinois . . . should be overruled." *Garrison* v. *Louisiana,* 379 U. S. at 82 (Douglas and Black, JJ., concurring). See also Clark, The Problem of Group Defamation, 13 Cleveland-Mar. L. Rev. 1, 3 (1964); Chafee, Government and Mass Communications 116-130; Kalven, The First Amendment and the Negro, Chap. 1; Cahn, The Predicament of Democratic Man 135-139 (1961); Reisman, Democracy and Defamation, 42 Col. L. Rev. 727, 742-743; Emerson, Towards a General Theory of the First Amendment, 72 Yale L. J. 877, 924 (1963).

rights. It is one thing to punish them if their conduct becomes criminal; it is quite another thing to silence them for fear that it will.

III.

This case is not moot.

Last term, in *Walker* v. *Birmingham*, 388 U. S. 307 (1967), this Court held that the constitutional validity of an injunction could not be tested by violating its terms. A party whose rights under the First Amendment are enjoined are now expected to pursue "orderly judicial review" whether or not the injunction is arguably or unarguably unconstitutional. 388 U. S. at 321. Cf. *Fields* v. *Fairfield*, 375 U. S. 248 (1963). If petitioners, on the one hand, are not to "bypass orderly judicial review" and, on the other hand, are to be out of court because judicial review effectively moots their claim, *Walker* v. *Birmingham* can fairly be said to have fashioned a rule of law that emasculates the First Amendment.

Furthermore, though the ten-day injunction at issue here has expired, its effects have not. By letter of July 12, 1967 (App., *infra*, p. 20a), the attorney for the Princess Anne Commissioners denied petitioners the right to hold a rally in Princess Anne on July 17, 1967, referring specifically to the decision of the Maryland Court of Appeals in this case.

> Regardless of the date the Commissioners have determined not to issue a permit for the use of sound making or sound reproducing devices under the provisions of Ordinance 22B (46)-1. On the basis of your past record the Commissioners have valid reason to believe that your proposed rally will be similar in

> purpose and intent in performance to your most recent rally in this town and your record of appearances in other areas. In view of the decision of the Maryland Court of Appeals filed June 7, 1967 in No. 525 September Term, the Commissioners do not feel that your rally will fall within the definition of freedom of speech as set forth by the Court of Appeals and by a long series of Supreme Court cases.

Thereafter, on July 25, 1967, the town through its attorney granted permission to hold rallies on July 28, 29, and 30, 1967, provided that the sound was amplified for no greater distance than 250 feet. In addition, however, the letter says that "you will not be permitted to use racial epithets or to make slanderous remarks about the members of any race or ethnic group." App., *infra*, p. 23a. Petitioners have not attempted to hold rallies in Princess Anne since August 6, 1966, and they have been denied permission to speak in other parts of the State. See letters, App., *infra*, pp. 18a, 19a, 24a.

The suppression of petitioners' speech is revealed in the letters from Princess Anne and other Maryland officials. It is the direct result of the decision of the Maryland Court of Appeals in this case and demonstrates that while the injunction has nominally expired, it still effectively defeats the exercise of petitioners' First Amendment rights in Maryland.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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October, 1967.

APPENDIX

IN THE

COURT OF APPEALS OF MARYLAND

No. 525

SEPTEMBER TERM, 1966

JOSEPH CARROLL, *et al.*,

v.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, *et al.*

HORNEY,
MARBURY,
BARNES,
McWILLIAMS,
FINAN,

JJ.

OPINION BY FINAN, *J.*

Filed: June 7, 1967

This is an appeal by Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford, and the National States Rights Party, hereinafter referred to as NSRP, from the temporary order of August 7, 1966, and the interlocutory order of August 30, 1966, rendered by the Circuit Court for Somerset County, chan-

cery division, at the instance of the appellees, the President and Commissioners of Princess Anne, the County Commissioners of Somerset County, and Mahlond Price and James E. Lauchner, individually, enjoining each of the appellants individually, as well as the NSRP, from holding rallies or participating in any public demonstrations in Somerset County for a period of ten months. The appellants, thereafter, filed an immediate appeal from the various orders below to this Court.

The appellants, each of whom are members or officers of the NSRP, a white supremacist political organization, held what could be described as a public rally or meeting near the courthouse steps on August 6, 1966, at 7:00 p.m., in the Town of Princess Anne, in Somerset County, for the purpose of publicly advancing the tenets of their cause.

The community, or some members of it, were notified four hours in advance of the proposal to hold this meeting. Upon their arrival, the appellants commenced to hook up a public address system. At this time, the appellants were approached by Captain Paul J. Randall, Troop Commander of the State Police for the Eastern Shore District. One of the appellants, Joseph Carroll, Youth Director of the NSRP, together with J. B. Stoner, attorney for the organization, asked Captain Randall if there was any law prohibiting the appellants from setting up an amplifying device and holding a rally in front of the courthouse on Somerset Street. Captain Randall advised Mr. Carroll that no such law existed. Accordingly, the privilege of holding the rally was extended to the appellants within the ambit of Captain Randall's authority. Captain Randall did request that the speeches omit any mention of two pending rape cases involving Negro defendants and a white victim. Thereafter, the rally was commenced by the playing of a

musical tape, capable of being heard for several blocks, to the repeated refrain: "Send the niggers north."

Princess Anne, population 1351 (948 white, 403 Negro) is the county seat of Somerset County, population 19,623 (12,315 white, 7,300 Negro). The county is sparsely settled, the majority of its inhabitants being farmers or watermen. Most of the time it is a tranquil community; however, in 1933 it was the scene of Maryland's last lynching. In 1964 the town was again the scene of serious racial disturbances during which time there were many demonstrations by students of Maryland State College, located in the town with a predominantly Negro student body of 730. A large detachment of Maryland State Police were called at that time to quell the disturbance and the Troop Commander of the State Police was seriously injured. Concentrated sulphuric acid was indiscriminately thrown at the police. Princess Anne is 40 miles from Cambridge, county seat of Dorchester County, where civil disturbances required the presence of the Maryland National Guard for a period of over a year (1963-64). The appellants, the week previously, had been arrested for causing a race riot in Patterson Park, Baltimore, Maryland, which had been given full TV, radio and press coverage. It was not mere chance which brought the appellants to Princess Anne.

At 7:15 Joseph Carroll opened the rally with the announcement that this was a white rally, designed to carry forward the views of the white people organized to oppose black terror, the Communist conspiracy in the United States, unconstitutional injunctions against good white people, such as the appellants, the Negro power structure, a mongrelization of the races and integration of schools and housing. To prevent mongrelization, Carroll assured his audience that they intended to fight in the courts and in every legal manner through the political organization

of the NSRP and that they had taken enough off of the "niggers" and enough off of "Martin Lucifer Coon."

The appellant, Richard Norton, leveled his sights at the school integration program. Under freedom of choice, according to Norton, a community was not forced to integrate its schools if it refused to accept, * * * "LBJ's Judas, thirty pieces of silver." The price of acceptance, continued Norton, would lead to rape and the "sacrifice of white blood" in our schools.

Norton lived up to the promise given Captain Randall that no mention would be made of the two pending rape cases involving Negro defendants and a white woman; however, with some relish he reminded the crowd about the 1933 lynching, saying:

> "In 1933 a nigger grabbed a 75 year old white woman in this town and brutually raped her, brutally raped her. What did they do? Did the people go out and say that nigger was a victim of discrimination and that's why he raped her? No, Let me tell you what happened. I am not advocating this but I am just recounting a bit of history. Three thousand people from this town rose up, took that beast out and hung him. You know what the Baltimore papers said, you know what they said? They called it Eastern Shore barbarism, Eastern Shore barbarism. Now a lot of oldtimers here tonight remember the stickers you all had on your cars and windows, 'I am an Eastern Shore man and damn proud of it.' You folks proud of it?
>
> "(Voices) Yeah, yeah."

On integration of schools, Mr. Norton had this to say:

"The act, this is a political struggle, we're in. It's a struggle for survival. Don't think you have it bad down here with niggers. Really, it's not too bad yet. Come to Baltimore City, see what's happening to schools there. The school superintendent of Baltimore City, the excellent Dr. Brain, three years ago his daughter went to Western High School. A nigger girl took a coke bottle, smashed the bottom out, and gouged that poor child's face. Well, after that Dr. Brain resigned, gone to Portland, Oregon, so his daughter could have plastic surgery. Now these bootlickers and political vermin, some of these preachers will tell you they accept this, this is insanity. Don't accept it. Never accept it. Organize. Fight it. You'll win every single time. You want to fight? Come on, let's hear it. Want to fight?

"(Voices) Yeah, yeah."

On employment, Mr. Stoner stated:

"If we only hire whites and we move the blacks out legally, in accordance with the law, up to New York or some place like that, we won't have niggers down here to mix up with."

Mr. Norton continuing on the theme of their Baltimore rally of the previous week, and the inevitable uprising of the whites, said:

"Well, let me tell you last Thursday night in Baltimore City, two thousand people stood out there in front of our speakers' platform and said that they didn't like niggers and it certainly shook up the political

structure of Baltimore City. They had to go to court to stop him. Now they are going to stop us for awhile.

"We know the feelings of people. We watched them for three years building in this country. This country, according to the Newsweek magazine, is probably heading for mass racial violence—two years, three years, nobody can stop it. We can't stop it and LBJ can't stop it, niggers can't stop it.

• • • • •

"We always urge white people to get their gun, always have a gun, know how to use it, always have a good supply of ammunition. I will tell you, friends, you are going to have to use it. It's no use hiding; you can't bury your head in the sand like an ostrich. The problems aren't going to go away. The time is come —you are going to have stand up and face it. You are going to have to face it.

• • • • •

"But come on back 7 o'clock tomorrow night. We're going to take it easy tonight—we don't want any heart attacks out there. And tomorrow night I want you people really hollering. No violence, just hollering. We want hollering so loud LBJ is going to hear it. Mayor McKeldin heard it in Baltimore. I understand (sic) pulled him half way out of bed."

The next speaker was the star of the attraction. A self-styled sometime lemon picker from California called the Reverend Connie Lynch whose oratorical harangue in part follows:

"Everyone of us has sworn to defend the Constitution. That means you. That means myself. We swore to de-

fend it against its enemies, foreign and domestic. You know what every white person in America should have done when that Supreme Court refused to rule in favor of the Constitution? [on school integration] They should have been impeached immediately. They should have been tried, convicted and hanged by—remember, the penalty for treason is death. • • •

• • • • •

"Whenever they make demands into our white society, when they say they're going to invade our white communities we are told we can't do anything about it—they have a right to come into your communities. But they're coming in there non-violently. Reminds me of someone coming to my house, knocking on my door, saying, 'Now look-a-here, I'm coming into your house, but I'm not coming in there violently; I'm coming in with a non-violent manner.' Then when he says, 'Now I see your wife there, non-violently I want your wife. And I see you got a beautiful daughter over here—with no violence, but non-violently I want your daughter.'

"Well, I've got an answer to it tonight. I'm willing now and I'll be willing tomorrow and I'll always be willing to fight. Yes, hell yes, any way it takes to fight to stop this invasion of our white communities. How do you white folks feel about it out there, huh?

"(Applause.)"

The rally lasted approximately an hour and one half. During the progress of the rally the crowd expanded from about fifty at the beginning to about one hundred and

fifty to two hundred persons at the conclusion and about twenty-five percent were Negroes, some of whom stood on the fringe of the crowd. Captain Randall, prior to the beginning of the rally had called in about thirty-five state policemen and during the progress of the rally asked for, and received, about twenty-six additional men.

The Court has had the benefit of listening to the tape recording made at the rally, which was filed as an exhibit in the court below. Toward the end, Mr. Norton shouted remarks in crescendo and in an hysterical, high-pitched cadence directed the following diatribe to the Negroes standing on the fringe of the crowd:

> "Well, we aren't going to scare any more, we aren't going to run any more—last summer, Adam Clayton Powell, the nigger congressman from Harlem, stood up and said, 'we got the white man on the run.' Well, personally this is one white man that's not going to run any more. We're gonna stop, we're gonna fight—and I'll tell you one thing, maybe we'll have to sit down in the middle of the street, we'll bring this whole damn program within one year to a crashing halt. We're going to beat them, we're going to beat them, we're going to beat them. We're going to work together—they haven't got a chance. *I'm going to tell you niggers out there now the best thing you can do is start taking reservations for Africa for you're finished. We don't need you. You're off, you're dead. Get ready to leave this country. Get ready to leave this country. You can leave a lot of ways—you can leave on boat, you can leave running, you can bicycle, or you can leave in a box. This is a white man's country. Princess Anne is a white man's town. This is a white man's county.*" (Emphasis supplied.)

The Court has reviewed the facts of this case in light of *Cox* v. *Louisiana*, 379 U.S. 536 (1965); *Cooper* v. *Aaron*, 358 U.S. 1 (1958); *Beauharnis* v. *Illinois*, 243 U.S. 250 (1952); *Terminiello* v. *Chicago*, 337 U.S. 1 (1949); *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942); *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Schenck* v. *United States*, 249 U.S. 47 (1919); and *Rockwell* v. *Morris*, 211 N.Y.S. 2d 25 (App. Div. 1961).

We think the lower court acted in the face of a clear and present danger in issuing the temporary restraining order, dated August 7, 1966, enjoining the appellants from holding rallies, "until the matter can be heard and determined in equity or for a period of ten days from the date hereof," and accordingly we affirm this action. We shall have more to say about the interlocutory injunction later in this opinion.

To elaborate at length on the cited authorities and their application to the case at bar, would be to write on a page of legal history already crowded. However, comment is necessary.

This Court is well aware that "Freedom of Speech," as guaranteed by the First Amendment of the Constitution of the United States is the cornerstone around which the house of government is built and without which other personal freedoms would atrophy.

However, as Justice Holmes pointed out in *Schenck, supra,* freedom of speech is not an absolute right, citing the example at p. 52 that: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." He gave us the "clear and present danger" doctrine.

The speeches delivered by the appellants must not be judged as they abstractly read or sound in the sequestered

atmosphere of judicial chambers, but with the realization that they were, in the nature of a harangue, delivered in the humidity of a torrid August night from the courthouse steps of a county seat whose people were not strangers to racial violence.

Captain Randall, Corporal Chaffey of the State Police, and Mr. Dashiell, a commissioner of the Town of Princess Anne, all having witnessed previous racial disturbances in Princess Anne and Officer Tenney of the Baltimore County Police testified as to the heightened tension of the crowd as the rally concluded. Colonel Davidson, Chief of Operations of the State Police, testified that at the time of the hearing on the injunction, August 30, 1966, "a very tense atmosphere" still existed.

The Court is aware that these witnesses were members of law enforcement agencies and one a town commissioner and that we cannot let our free institutions be circumscribed by the criterion of a police state, as was said by Justice Black in his dissent in *Feiner* v. *New York*, 340 U.S. 315 (1951) (dissenting opinion at 340 U.S. 321). The Court also realizes that the State has the duty to provide safeguards for those who wish to publicly air their views. Nor, can the authorities rid themselves of an unpleasant task by the simple expediency of not letting malcontents or agitators meet. Yet, the testimony of these men, as to the temper of the community and the immensity of danger, cannot be discounted. They wore the mantle of authority and were charged with the onerous burden of preserving the peace. Theirs was the responsibility of providing protection, not only to those persons who might gather at a rally the following night or thereafter, and to the townspeople of Princess Anne, but to the speakers themselves.

The Maryland State Police have had much experience in recent months with "brinkmanship diplomacy," in handling racial meetings and calculating when the "brink" of peaceable exhortation has been reached. There are countless individuals who stand by ready to castigate when the protectors of the public safety miscalculate.

We must also look at the words of the speeches themselves, the common meaning of the words and the manner in which they were delivered. They do not represent an attempt on the part of those addressing the crowd at intellectual persuasion or an appeal to reason by championing a particular social, religious, racial or political philosophy. These were provocative gut speeches, interlaced with "fighting words," delivered in an inflammatory manner aimed at the raw emotions of the listeners. As Justice Frankfurter said in *Drivers Union* v. *Meadowmoor Co.*, 312 U.S. 287, 293 (1941): "But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The instant setting was far more volatile than that found in *Cantwell*. The passages are more inflammatory than those of *Feiner, Chaplinsky* or *Cox*. The "fighting words" more identifiable as such than in *Beauharnais* or *Chaplinsky*.

In the instant case the remarks and epithets hurled directly at the Negroes on the fringe of the crowd were nothing less than an invitation to mutual violence, for which the opportunity was being set up for the following night.

Although the State has the duty to provide safeguards for those who wish to publicly air their views, we do not think this duty extends to providing a protected forum from

which persons may taunt with "fighting words" those who otherwise would be law-abiding citizens.

Nor was this a case of prior restraint, as in *Rockwell, supra.* The rally was actually staged, the speakers threw down the gauntlet by way of a challenge, particularly to the Negro segment of the community as to what might be expected the following night; at which rally they promised more of the same—only more vituperative, more vicious.

This is not a case where the speakers were restrained by direct police action. The restraint was not imposed upon the speakers until after the matter was given the disciplined review of the court.

We have stated that we are of the opinion that the court was correct in issuing its temporary order, dated August 7, 1966, restraining the defendants from holding rallies and meetings until the matter could be determined by a court of equity or for a period of ten days from the date of the issuance of the restraining order. However, we think the court erred in making its interlocutory order for a period of ten months. It is apparent that the lower court meant for its injunction to be coextensive with the academic year of Maryland State College, which was due to commence within a few days after the issuance of the interlocutory decree of August 30, 1966, and which would normally end in June of 1967. However, we think that the period of time was unreasonable and that it was arbitrary to assume that a clear and present danger of civil disturbance and riot would persist for ten months.

Temporary order of August 11, 1966 affirmed, interlocutory order of August 30, 1966 reversed. Each party to pay their respective costs.

Opinion

IN THE

CIRCUIT COURT FOR SOMERSET COUNTY, MARYLAND

No. 8338 Chancery

THE PRESIDENT and COMMISSIONERS OF PRINCESS ANNE, a municipal corporation, COUNTY COMMISSIONERS OF SOMERSET COUNTY, a corporation, and NORRIS DASHIELL, MAHLON D. PRICE and JAMES E. LAUCHNER, Princess Anne, Somerset County, Maryland,

—VS.—

JOSEPH CARROLL, of Baltimore County and State of Maryland, RICHARD NORTON, J. B. STONER, CONNIE LYNCH, ROBERT LYONS and WILLIAM BRAILSFORD, whose addresses are unknown but temporarily in Somerset or Worcester Counties of the State of Maryland, and NATIONAL STATES RIGHTS PARTY, whose address is unknown.

The Commissioners of Princess Anne and the County Commissioners of Somerset County seek, by the Bill of Complaint filed in this cause, to restrain the named individual defendants as well as the National States Rights Party from holding rallies or meetings in Somerset County and to further restrain them from using any device to amplify the human voice on records or otherwise.

Princess Anne, the county seat of Somerset County, has quite a high percentage of Negro residents and is also the

site of Maryland State College, a predominantly Negro College. For time immemorial, the relationship between the white and negro races in this county seat as well as the county itself, has been that of mutual respect and deference with perhaps isolated incidents occurring between the individual members of the different races, but no widespread disorder has enveloped the county or city, until on or about 1964.

During the fall of that year, what we now refer to as demonstrations (formally riots) became so violent that it was doubted by many the situation could be controlled without the aid and assistance of the National Guard. The fears, anxiety and apprehension of the populace were well founded, for the commander of the State Police at the scene was injured so badly that he has not yet recovered and the prognosis is not certain as to his eventual full recovery. If this riot had become unmanageable, disaster and catastrophe would have been the inevitable result. Since the date of those riots, an uneasy truce seems to be the status.

One witness, a town commissioner, whom we believe to be in a position to know, feels that the scales may be tipped at any moment and another series of tragic events may follow. He states as a reason for this that on at least two occasions, perhaps more, small crowds or gangs have either attacked or have set upon members of the opposite race and had it not been for the alert and firm action of the police, more difficult situations could have arisen. We know this to be a true situation for participants in those fracases have been tried in this very Court. So it can be readily ascertained that in the area of race relationships, any movement to arouse anger and passions could easily destroy the

peace and tranquility of this community without much effort.

With this circumstance existing, on August 6, 1966, the National States Rights Party decided to have a meeting with apparent purpose of informing the public in this vicinity of the purpose and tenets of the party and without any known prior advanced billing, held a meeting on the Court House steps, beginning at approximately 7:00 p.m.

The State Police were informed that this gathering was to be held and being fearful that some disorder was likely to be the result, congregated all available Troopers not otherwise on duty, close at hand without their presence being known to the participants, both speakers and listeners, and as near as we can recollect, we think that about sixty officers were located in a building of the State Roads Commission not too far from the Court House.

After some inquiry concerning the right to hold a meeting on the Court House steps, the speakers were advised there was no local ordinance against their contemplated activity. They then placed several loud speakers at advantageous points and began playing records, most of which were not understandable, but the word "Nigger" could be heard on a number of occasions. The loud and raucous noises attracted perhaps some two hundred people with about twenty-five percent Negro. At the conclusion of the records, to attract an audience, the speakers began their harangue.

It is difficult to conceive of more vituperative and insulting statements in the so called speeches. We have got to assume that the National States Rights Party stood for what the speakers on this evening stated because at one point they stated that this party "is the only white man's

political party in America" and for "resending of the Niggers back to Africa, carrying out the purpose of our forefathers that wanted it written in the constitution to stop these Kike-Hating Jews from becoming citizens". At one point a speaker states "I'm going to tell you niggers out there now the best thing you can do is start taking reservations for Africa for you're finished. We don't need you. You're off, you're dead. Get ready to leave this country? Get ready to leave this country. You can leave a lot of ways—you can leave on boat, you can leave running, you can bicycle, or you can leave in a box. This is a white man's country. Princess Anne is a white man's town. This is a white man's country." The statements just quoted set the theme for the entire dialogue and need not be further detailed.

Any fair interpretation of the stated principles of this "political party" is that it advocates the expulsion of two races from citizenship in this country, if not their extermination. The holocaust of the last World War is too vivid in the memory of the Court to be persuaded that acts and statements motivated by the enunciated principals should be permitted even under the guise of "free speech". It is clearly our understanding a person or a group of persons have an absolute right to speak their convictions, espouse any cause they desire, unless by so doing there is a clear and present danger of disorder, rioting or a breach of the peace.

Schenck v. *United States* (1918), 249 U. S. 47, 63 L. Ed. 470;

Cantwell v. *Connecticut* (1940), 310 U. S. 296, 84 L. Ed. 2d 471;

Cox v. *Louisiana* (1965), 379 U. S. 536, 13 L. Ed. 2d 471;
Cox v. *Louisiana* (1965), 379 U. S. 559, 13 L. Ed. 2d 487;
Edwards v. *South Carolina* (1963), 372 U. S. 229, 9 L. Ed. 697.

We are mindful of the principles set out in *Terminiello* v. *City of Chicago*, 337 U. S. 1 (1949); *Wright* v. *Georgia*, 373 U. S. 284 (1963); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963), but we cannot find in this incident that the speeches of Lynch, Carroll, and Norton advocating racial violence and unrest are unlawful in the first instance.

On the other hand, we feel the "free speech" clause of the Constitution does not permit an individual or a group of individuals to publicly use abusive and insulting language to any race in a public place, with members of that race present and suggest they leave their country and if they did not do so, their lives would be in danger. In addition it is our belief there was a "clear and present danger" of a riot had the speakers been permitted to return. In fact, disorder would have been the inevitable result.

An Order will be signed extending the injunction for a definite period of time from the date thereof.

(Signature illegible)
Judge

(Signature illegible)
Judge

DEPARTMENT OF POLICE
TOWN OF EASTON
MARYLAND

(Emblem)

WILLIAM H. WILKINSON,
CHIEF

May 3, 1967

Mr. Richard M. Norton, Coordinator
National States Rights Party
P. O. Box 442
Baltimore, Maryland 21203

Dear Mr. Norton:

Receipt is acknowledged of your application dated April 27th, 1967, for a permit for the National States Rights Party to hold a rally in Easton on May 13th and 14th, 1967, from 5:00 to 7:00 P. M. I might call to your attention that the letter dated April 19th, 1967 from Joseph J. Carroll mentions the dates of May 12th and 13th.

I wish to advise you that I must refuse to issue the requested permit for the reason that I cannot make the findings with regard to this application which are required under the terms of our Ordinance regulating permits for public meetings.

I wish to advise you that you have a right to appeal from this denial to the Council of Easton, which appeal must be in writing and must be made within ten days following this notification.

Very truly yours,

/s/ WILLIAM H. WILKINSON
William H. Wilkinson
Chief of Police

WHW:S

TOWN OF EASTON
MARYLAND

SHERWOOD M. HUBBARD
MAYOR

May 16, 1967

Mr. Richard B. Norton, Coordinator
National States Rights Party
P. O. Box 442
Baltimore, Maryland 21203

Dear Mr. Norton:

At the Regular Meeting of the Mayor and Council held on May 15th, 1967, the formal appeal from the ruling of the Chief of Police denying you a permit to hold political rallies on public property in the Town of Easton was considered.

The Council was unanimous in its decision to uphold the denial by Chief William H. Wilkinson.

Yours very truly,

/s/ S. M. HUBBARD
Mayor

SMH:S

(Letterhead of Jones & Jones, Attorneys,
Princess Anne, Md.)

July 12, 1967

Joseph J. Carroll
Field Director
National States Rights Party
Box 442
Baltimore, Maryland 21203

The President and Commissioners of Princess Anne have received your letter of July 7th. In this letter you state that you have scheduled a rally for the Town of Princess Anne, July 17th at 7:00 P.M. You also state that you hope to have the Commissioners' answer to your letter prior to July 22nd. Since your own letter is so confused the Commissioners are unable to determine the date on which you wish to hold the rally.

Regardless of the date the Commissioners have determined not to issue a permit for the use of sound making or sound reproducing devices under the provisions of Ordinance 22B (46)-1. On the basis of your past record the Commissioners have valid reason to believe that your proposed rally will be similar in purpose and intent in performance to your most recent rally in this town and your record of appearances in other areas. In view of the decision of the Maryland Court of Appeals filed June 7, 1967 in No. 525 September Term, the Commissioners do not feel that your rally will fall within the definition of freedom of speech as set forth by the Court of Appeals and by a long series of Supreme Court cases.

Accordingly, if you hold your rally in violation of Ordinance 22B (46)-1 you will immediately subject yourself to the penalties and provisions of that ordinance. The Commissioners also wish to inform you that should the rally result in violation of any local or statewide law that you will also be subject to any penalties and provisions of those laws and that should you persist or announce your intention to persist contrary to any local or statewide law that the Commissioners will apply to the Courts for a proper injunction or other appropriate relief.

JONES & JONES

/s/ ALEXANDER G. JONES
Alexander G. Jones
Attorney to President and
Commissioners of Princess Anne

AGJ:pea

cc: The President and Commissioners of Princess Anne

(Letterhead of Jones & Jones, Attorneys,
Princess Anne, Md.)

July 25, 1967

Joseph J. Carroll
National States Rights Party
Post Office Box 442
Baltimore, Maryland 21203

Your letter of July 18, 1967, is hereby acknowledged. I wish to advise you that a permit to use sound equipment for your proposed rallies on the evenings of July 28, 29 and 30, 1967, or any subsequent rallies, will, upon approporiate application, be issued, subject to the condition that such equipment does not carry the sound for a distance greater than two hundred fifty (250) feet. The Commissioners of Princess Anne deem this limitation reasonable and necessary in order to preserve the rights of the town's citizens living near the site of your rallies.

You and your party may exercise to the fullest allowable extent the rights granted to you in the First Amendment. You may express whatever political, social or economic views you desire to express, and support your chosen candidates for any public office. We are aware, however, that rallies conducted by your group, or with the participation or support of your group, have led to violence and rioting, or the danger thereof, in the past. The episodes in Baltimore and Princess Anne last summer and the near incidents in Cambridge on July 15, 1967, are examples of this.

You are well aware that the right of free speech has constitutional limitations. It does not permit the inciting of riots by the use of "fighting words" or exhortations to violence. See *Schenck* v. *United States*, 249 U.S. 47; *Cantwell* v. *Connecticut*, 310 U.S. 296; *Chaplinsky* v. *New Hampshire*, 315 U.S. 568; *Beauharnais* v. *Illinois*, 343 U.S. 250; *Feiner* v. *New York*, 340 U.S. 315. The Town Commissioners have a duty to preserve the peace and tranquility of the town, as well as your right of free speech.

On behalf of the Commissioners, I therefore advise you that you will not be permitted to use racial epithets or to make slanderous remarks about the members of any race or ethnic group. In the present climate in this community, such comments on your part would constitute a clear invitation to violence and rioting and would generally endanger the public peace and safety. Nor will you be permitted to exhort persons to commit violence or to riot, no matter how negatively or subtly such exhortations may be phrased. If you or any other speaker violate this condition, and it appears to the duly constituted police authorities that such violation is creating a clear and present danger of violence or disturbance of the peace, the rally will be stopped and the violator held responsible. See that all participants in the rallies are advised of this condition.

/s/ ALEXANDER G. JONES

Alexander G. Jones
Attorney to
President and Commissioners
of Princess Anne

AGJ:ep

(Letterhead of Dept. of Recreation and Parks,
Druid Hill Park, Baltimore, Maryland)

August 2, 1967

Mr. Richard B. Norton, Coordinator
National States Rights Party
P. O. Box 442
Baltimore, Maryland 21203

Dear Mr. Norton:

This will acknowledge receipt of your application, dated July 28, 1967, for a permit to hold a public meeting or assembly at Garrett Park on August 4, 1967 and August 5, 1967, from 7:00 P.M. to 8:30 P.M.

Rule 46(d) of the Rules and Regulations of the Department of Recreation and Parks provides, in part, as follows:

> "Whenever in the judgment of the Superintendent of Parks, or his authorized representative, the issuance of a permit to hold any of the events mentioned in paragraph b. hereof at any particular place or at any particular time will have any detrimental effect, when considered in relation to the comfort and convenience of the public generally, upon vehicular and pedestrian traffic; recreational activity; the operation or functioning of stores, offices or other places of business; or the peace and good order of the residents, (any or all of which are located in the vicinity of the place where any of the aforementioned events are to be held) or any combination thereof, then the Superintendent of Parks, or his authorized representative, shall have the right to refuse to issue the requested permit . . . ."

It is my judgment that the issuance of the permit which you request would have a detrimental effect on the peace and good order of the residents as provided in the rule, and further would have a detrimental effect on the comfort and convenience of the public generally within the meaning of the rule. I base my judgment on the conditions of public disorder and riot which have occurred this summer in a large number of the metropolitan areas of this country. In light of these occurrences, I believe that any public meeting or assembly conducted by you at this time in the public parks would constitute a clear and present danger to the public peace and good order.

Very truly yours,

/s/ DOUGLAS S. TAWNEY
Douglas S. Tawney
Director

DST:rg

cc: Mr. L. Edgar Myerly
Mr. Harry Kues
Mr. Ambrose Hartman
Police Commissioner Donald Pomerleau

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DEC 19 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 6

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, AND THE NATIONAL STATES RIGHTS PARTY,

Petitioners,

v.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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For Respondents.

INDEX

Table of Contents

	PAGE
Opinion Below	1
Jurisdiction	1
Constitutional Provisions	2
Questions Presented	2
Statement of the Case	3
Argument:	
I. The issue before this Court is moot in any event since the Temporary Injunction has long since expired	5
II. The Order of the Circuit Court for Somerset County granting a temporary injunction was in accord with applicable decisions of this Court and so did not violate rights assured to Petitioners under the Constitution of the United States	7
Conclusion	13
Appendix:	
Circuit Court for Somerset County, Maryland No. 8338 Chancery—	
Temporary Order — August 7, 1966	1
Writ of Injunction — August 7, 1966	2
Interlocutory Order — August 30, 1966	3

Table of Citations

Cases

Beauharnais v. Illinois, 343 U.S. 250 (1952)	12
Brownlow v. Schwartz, 261 U.S. 216 (1923)	5
Cantwell v. Connecticut, 310 U.S. 296 (1940)	10

	PAGE
Carroll v. Princess Anne, 247 Md. 126, 230 A. 2d 452 (1967)	1
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)	10, 12
Cottonreader v. Johnson, 252 F. Supp. 492 (1966)	8
Cox v. Louisiana, 379 U.S. 536 (1965)	12
Edwards v. South Carolina, 372 U.S. 229 (1963)	12
Freedman v. Maryland, 380 U.S. 51 (1965)	7, 8
Kunz v. New York, 340 U.S. 290 (1951)	11
Local No. 8-6 v. Missouri, 361 U.S. 363 (1960)	5, 6
Milk Wagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941)	7, 8, 9, 12
Terminiello v. Chicago, 337 U.S. 1 (1949)	12
Texas & Pacific Ry. Co. v. Interstate Transp. Co., 155 U.S. 585 (1895)	6
Time v. Hill, 385 U.S. 374 (1967)	12
United States v. U. S. Klans, Knights of Ku Klux Klan, Inc., 194 F. Supp. 897 (1961)	8

Statutes

Constitution of the United States:	
First Amendment	2, 7
Fourteenth Amendment, §1	2
28 U.S.C. §1257(3)	2

Miscellaneous

Maryland Rules of Procedure:	
Rule BB72 b.	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 689

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, AND THE NATIONAL STATES RIGHTS PARTY,

Petitioners,

v.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals of Maryland appears in full on pages 1a through 12a of the Appendix to the Petition for Writ of Certiorari, and is also reported in 247 Md. 126, 230 A. 2d 452 (1967).

JURISDICTION

The judgment of the Court of Appeals of Maryland, which affirmed a temporary order of August 7, 1966, issued

by the Circuit Court of Somerset County (in equity) restraining Petitioners from holding certain meetings, and which reversed because of its duration an interlocutory order of August 30, 1966, extending the injunction for a period of ten months, was entered on June 7, 1967.

Jurisdiction to review the judgment in question by Writ of Certiorari is conferred under 28 U.S.C. §1257(3) since rights, privileges and immunities are claimed by Petitioners under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS

The First Amendment to the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States and subject to the Jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED

1. Is the issue before this Court moot in any event since the temporary injunction has long since expired?

2. Was the order of the Circuit Court for Somerset County granting a temporary injunction in accord with

applicable decisions of this Court and so did not violate rights assured to Petitioners under the Constitution of the United States?

STATEMENT OF THE CASE

Respondents accept Petitioners' Statement of the Case with the following additions:

At the time Petitioners spoke in Princess Anne, Somerset County, Maryland on August 6, 1966, there was a tense atmosphere concerning local racial conditions (T.[1] 25).

Capt. Paul J. Randall, Troop Commander, Eastern Shore District, Maryland State Police, testified that the probable consequence, had Petitioners been allowed to continue meetings in August, was that there would have been a riot (T. 42). Somerset County had had its share of racial troubles and disorders. In Princess Anne, however, the local community leaders had been working to resolve their problems at the local level. Norris Dashiell, one of the Town Commissioners for Princess Anne and a Respondent herein, in response to a question about conditions at the rally on the night of the 6th, said:

> "That if we didn't get something done to slow it down, knowing what I know about the tension around here between the races — we are all the time giving and taking and talking back and forth, as everybody knows, about the civil rights deal. And I know that it is on a teeter, it could go either way, and anybody else around here knows the same thing.
>
> And I am just as positive as I can be that if this thing had been continued we would have a riot, to be truthful" (T. 64).

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[1] "T." refers to the transcript of the hearing August 17, 1966 on the injunction, which is part of the certified record filed with the Clerk of this Court.

In their speeches Petitioners used vile, offensive, derogatory and threatening language. Most prevalent throughout the speeches was the word "Nigger", and one witness testified that he understood part of a record played at the rally to say "we have got to kill them niggers" (T. 36). During his speech, Petitioner Norton directed part of his remarks to a group of Negroes in the crowd and said "[g]et ready to leave this country. You can leave a lot of ways — you can leave on boat, you can leave running, you can bicycle, or you can leave in a box" (TT.[2] 61). Norton also made reference to a 1933 incident in Somerset County in which a Negro had been lynched for the alleged rape of an elderly white woman. He told the crowd:

> "Thirty days ago I sat in the Enoch Pratt Library in Baltimore, Maryland, going over a microfilm. I got to the 1933. In 1933 a nigger grabbed a 75 year old white woman in this town and brutally raped her, brutally raped her. What did they do? Did the people go out and say that nigger was a victim of discrimination and that's why he raped her? No. Let me tell you what happened. I am not advocating this but I am just recounting a bit of history. Three thousand people from this town rose up, took that beast out and hung him. You know what the Baltimore papers said, you know what they said? They called it eastern shore barbarian, eastern shore barbarian. Not a lot of old-timers here tonight remember the stickers you all had on your cars and windows, I am an eastern shore man and damn proud of it. You folks proud of it?" (TT. 12).

Although at points Petitioners specifically denied they were interested in violence and appeared to appeal to the crowd to avoid violent acts, they called on the people to never accept integration, to "[f]ight it. You'll win every

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[2] "TT." refers to transcript of speeches on August 6, 1966, which is part of the certified record.

single time. You want to fight? Come on, let's hear it. Want to fight?" (TT. 13). In urging the crowd to always have a gun, know how to use it, and always have a good supply of ammunition, they said:

> "you are going to have to use it. It's no use hiding; you can't bury your head in the sand like an ostrich. The problems aren't going to go away. The time is come — you are going to have to stand up and face it. You are going to have to face it" (TT. 28-29).

Petitioner Lynch made it clear that he was ready for a fight:

> "I'm willing now and I'll be willing tomorrow and I'll always be willing to fight. Yes, hell yes, any way it takes to fight to stop this invasion of our white communities. How do you white folks feel about it out there, huh?" (TT. 50-51).

Officer Charles W. Teeny of the Baltimore County Police Bureau, Intelligence Section, testified that "during the last part of the speeches four negro subjects locked arms together and marched through the group of white people and it right evident if there had been a push we would have had trouble" (T. 76).

ARGUMENT

I.

THE ISSUE BEFORE THIS COURT IS MOOT IN ANY EVENT SINCE THE TEMPORARY INJUNCTION HAS LONG SINCE EXPIRED.

It was said in *Brownlow v. Schwartz*, 261 U.S. 216, 217 (1923) that "[t]o adjudicate a cause which no longer exists is a proceeding which this court uniformly has declined to entertain." Cited in *Local No. 8-6 v. Missouri*, 361 U.S. 363 (1960).

In *Local No. 8-6 v. Missouri, supra,* the Court was asked to uphold the validity of an injunction which expired by its own terms more than three years before the date of the decision of the Supreme Court. The Court declined to consider the case on its merits and noted that any judgment which it could render "would be wholly ineffectual for want of a subject matter on which it could operate." 361 U.S. 371. The reason for the Court's refusal to consider the case on its merits was stated thusly:

> "An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other." 361 U.S. 371.

Further, as this Court said in *Texas & Pacific Ry. Co. v. Interstate Transportation Co.*, 155 U.S. 585, 589 (1895) "[t]o now entertain the bill would be to deal with a state of affairs no longer existing, and which possibly may never recur."

These same comments are applicable to the present case. The temporary order issued by the Circuit Court for Somerset County (Apx.[3] 1), which is the subject of the Petition, expired with the filing of the interlocutory order on August 30, 1966 (Apx. 3), more than sixteen months ago. The injunction was obviously based upon a particular set of facts and circumstances existing at the time the temporary order was issued. Thus, any action by this Court now would be wholly ineffectual for want of a subject matter, and the exact facts and circumstances existing at the time the temporary order was issued will possibly (probably) never recur.

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[3] "Apx." refers to Appendix to Respondents' Brief.

Respondents respectfully submit that the Petition for Writ of Certiorari should be denied on the basis that the issue before this Court is moot.[4]

II.

THE ORDER OF THE CIRCUIT COURT FOR SOMERSET COUNTY GRANTING A TEMPORARY INJUNCTION WAS IN ACCORD WITH APPLICABLE DECISIONS OF THIS COURT AND SO DID NOT VIOLATE RIGHTS ASSURED TO PETITIONERS UNDER THE CONSTITUTION OF THE UNITED STATES.

Even if this Court determines that the issue before it is not moot, it should decline to grant the Petition for Writ of Certiorari sought herein. Respondents call attention to the fact that this case involves an injunction granted by a court of competent jurisdiction in the State of Maryland. In dealing with injunctions, this Court has recognized the right of a state court to enjoin acts which may cause or lead to violence. *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941).

The cases cited by Petitioners in support of their contention that the temporary injunction was improperly granted because it was a prior restraint of speech in violation of the First Amendment involved either appeals of criminal convictions, or attacks upon an ordinance or statute that imposed some restraint on speech (or the press) prior to *any* judicial consideration of the action, viz, licensing requirements, censorship, etc.

Freedman v. Maryland, 380 U.S. 51 (1965), cited by Petitioners, clearly points up the theory and philosophy behind the distaste which this Court has shown towards prior restraints upon speech in the cases cited by Peti-

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[4] Respondents take exception to the letters which appear on pages 18a through 25a of the Appendix to Petitioners' Brief. These letters are not part of the record of the case tried below and are thus not properly before this Court.

tioners. When this theory and philosophy is reviewed, it is clear that it is not applicable to the present situation. In *Freedman*, the Court stated, at 58, that "[t]he teaching of our cases is that, because only a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint." *Freedman* also made it clear that this Court is concerned not only with the availability of a judicial determination upon a restraint of speech, but also with the speed with which one claimed to be aggrieved by such a restraint may obtain judicial review thereof.[5]

As noted above, the right of a state court to issue an injunction in order to preserve the public peace, even though such injunction may restrain one's unbridled freedom of speech, was recognized by this Court in *Milk Wagon Drivers Union v. Meadowmoor Dairies, supra.*[6] The injunction may even be issued though the restricted action itself is not violent, but is likely to cause violence. "The

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[5] We call the Court's attention to Rule BB72 b. of the Maryland Rules of Procedure, which provides that:

> "An ex parte injunction shall be served forthwith on the adverse party by the quickest possible means; it shall give the adverse party leave to move for a hearing on not more than two days' notice; and it shall expire by its terms within such time after entry as the court may fix. Such time shall not exceed ten days, in case of a resident, and shall not exceed thirty-five days, in case of a nonresident. The court may within the time so fixed, for good cause shown, extend such time for a like period or for a longer period if the party against whom the injunction is directed consents."

[6] Inferior federal courts have also applied use of this injunctive power. See *United States v. U. S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897 (1961) and *Cottonreader v. Johnson*, 252 F. Supp. 492 (1966). In *United States v. U. S. Klans, supra*, it was noted that "[c]ivil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." 194 F. Supp. 905.

question which thus emerges is whether a state can choose to authorize its courts to enjoin acts of picketing in themselves peaceful when they are enmeshed with contemporaneously violent conduct which is concededly outlawed." 312 U.S. 292. This Court recognized that it can even look beyond the narrow acts sought to be enjoined and consider them in the light of their surroundings:

> "* * *. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution.
>
> * * * * * * *
>
> "* * *. And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful. So the supreme court of Illinois found. We cannot say that such a finding so contradicted experience as to warrant our rejection. Nor can we say that it was written into the Fourteenth Amendment that a state through its courts cannot base protection against future coercion on an inference of the continuing threat of past misconduct." 312 U.S. 293-295.

This Court thereupon affirmed the issuance of the injunction by the Illinois court and, on the issue of the possible transgression of constitutional rights, said "[w]e find nothing in the Fourteenth Amendment that prevents a state if it so chooses from placing confidence in a chancellor's decree and compels it to rely exclusively on a policeman's club." 312 U.S. 295.

Respondents submit that the decision and opinion in the *Milk Wagon Drivers Union* case are applicable to the present situation. Respondents had the right to seek, as

they did, a judicial alternative to rioting in the streets. They had the right to seek, as they did, to prevent those classes of speech which have never been thought to raise any constitutional problems, viz., the libelous and the insulting or fighting words. See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942).

The words used by Petitioners in their speeches on August 6th amounted to such "libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire, supra*, at 572. The use of such words gives to a state not only the power to punish those who emit the utterances, but also the power to *prevent* the same. *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940). In *Chaplinsky*, it was said, at 573, that:

> "* * *. The statute as construed, does no more than prohibit the face-to-face words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitute a breach of the peace by the speaker — including 'classical fighting words,' words in current use less 'classical' but equally likely to cause violence, and other disorderly words, including profanity, obscenity and threats."

In the instant case, the language used by Petitioners in their speeches on August 6th was more inflammatory and threatening than that in *Chaplinsky*. In the crowd listening to Petitioners were a group of Negroes. Directing his comments to them, Petitioner Norton said:

> "* * *. I'm going to tell you niggers out there now the best thing you can do is start taking reservations for Africa for you're finished. We don't need you. You're off, you're dead. Get ready to leave this country. Get ready to leave this country. You can leave a lot of ways — you can leave on boat, you can leave running, you can bicycle, or you can leave in a box. This is a

white man's country. Princess Anne is a white man's town. This is a white man's county" (A.[7] 8a).

Throughout Petitioners' speeches their language and references amounted to epithets that could only, as they were intended to do, insult, defame, libel and revile some of those in the crowd, and were likely to incite an immediate breach of the peace.

In his dissenting opinion in *Kunz v. New York*, 340 U.S. 290, 299 (1951), Mr. Justice Frankfurter eloquently classified the type of language used by petitioners:

> "* * *. These terse epithets come down to our generation weighted with hatreds accumulated through centuries of bloodshed. They are recognized words of art in the profession of defamation. They are not the kind of insult that men bandy and laugh off when the spirits are high and the flagons are low. They are not in that class of epithets whose literal sting will be drawn if the speaker smiles when he uses them. They are always, and in every context, insults which do not spring from reason and can be answered by none. Their historical associations with violence are well understood, both by those who hurl and those who are struck by these missiles. Jews, many of whose families perished in extermination furnaces of Dachau and Auschwitz, are more than tolerant if they pass off lightly the suggestion that unbelievers in Christ should all have been burned."

The Negroes in the crowd listening to Petitioners' harangues would likewise have been "more than tolerant" if they had passed off lightly the thinly veiled threat to them contained in Petitioner Norton's references to a 1933 lynching that had taken place in Somerset County. In obvious contempt of a request by the police not to refer

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[7] "A." refers to Appendix to Petitioners' Brief.

in their speeches to two rape cases then pending in Somerset County, Petitioner Norton mentioned the 1933 incident, which had involved a Negro who was charged with having raped an elderly white woman.[8]

Petitioners' reliance on *Terminiello v. Chicago*, 337 U.S. 1 (1949), *Edwards v. South Carolina*, 372 U.S. 229 (1963), and *Cox v. Louisiana*, 379 U.S. 536 (1965) as justification for this Court's granting Certiorari is misplaced. In both *Edwards* and *Cox* the Court specifically found an absence of any "fighting words". In *Terminiello* the Court did not even reach that point, as it found that a preliminary point was dispositive of the case. In regard to Petitioners' attempt to delimit the authority of *Beauharnais v. Illinois*, 343 U.S. 250 (1952) in the present case, it need only be said that Petitioners misquote the language of *Time v. Hill*, 385 U.S. 374, 390 (1967).

Respondents submit that the words used by Petitioners in their speeches on August 6, 1966 amounted to "fighting words"; that this case is clearly under the authority of *Chaplinsky v. New Hampshire, supra*; and that the Temporary Injunction was valid under *Milk Wagon Drivers Union v. Meadowmoor Dairies, supra*. Accordingly, the Temporary Injunction issued by the Circuit Court for Somerset County was in accord with applicable decisions of this Court and did not violate any rights assured to the Petitioners under the Constitution of the United States.

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[8] In his comments, Mr. Justice Frankfurter also said "[o]f course, people might pass this speaker by as a mental case, and so they might file out of a theatre in good order at the cry of 'fire'. But in both cases there is genuine likelihood that someone will get hurt." *Kunz v. New York, supra*, at 299.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

FRANCIS B. BURCH,
Attorney General of Maryland,

S. LEONARD ROTTMAN,
Assistant Attorney General,

THOMAS S. SIMPKINS,
Attorney for Somerset County, Maryland,

ALEXANDER G. JONES,
Attorney for Town of Princess Anne, Somerset County,
For Respondents.

APPENDIX TO BRIEF IN OPPOSITION NO. 689

Circuit Court for Somerset County, Maryland

No. 8338 Chancery

TEMPORARY ORDER

August 7, 1966

Upon reading and filing the verified complaint of the plaintiffs in this action, and the affidavit of Norris Dashiell, one of the plaintiffs, and from the action of the defendants in front of the Court House and on the Court House lawn on the night of August 6, 1966, and the inflammatory remarks made by at least two of the aforesaid defendants and the disturbance of the people and the amplification of their voices and of the music played on the said amplifier, it appears to the satisfaction of the court that this is a proper case for granting a temporary restraining order and unless the temporary restraining order prayed for be granted great injury will result to the plaintiffs and the citizens of Somerset County before the matter can be heard on notice; now therefore,

It is hereby ORDERED that the defendants be and appear before this Court, at the hour of 10:00 A.M., on August 17, 1966, then and there to show cause, if any they have, why, they, and their agents, servants, employees, and attorneys, should not be permanently enjoined and restrained from holding rallies, meetings and the use of amplifying machines that will tend to excite racial ill will, riots and disturbances.

It is further ordered that pending the hearing on this order to show cause that defendants, their agents, servants, employees, and attorneys, be and they are enjoined and restrained from holding rallies, gatherings or meetings and the use of amplified apparatus anywhere in Somerset

County that will in any manner excite to riot or any other illegal act or acts.

It is further ORDERED that a copy of the complaint and the affidavit of Norris Dashiell be served on the defendants not later than the 7th day of August, 1966.

.....

Judge

WRIT OF INJUNCTION

State of Maryland,
Somerset County, To Wit:

To: Joseph Carroll, of Baltimore County and State of Maryland, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons and William Brailsford, whose addresses are unknown but temporarily in Somerset or Worcester Counties of the State of Maryland and National States Rights Party whose address is unknown.

GREETING:

We command and strictly enjoin and prohibit you and the said Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, William Brailsford and National States Rights Party from holding rallies or meetings in Somerset County which will tend to disturb and endanger the citizens of the County and to enjoin you, the said defendants, from using and operating or causing to be operated within the County any devices or apparatus for the application of the human voice or records from any radio; phonograph or other sound making or producing device thereby disturbing the tranquility of the populace of the County, until the matter can be heard and determined in equity or for a period of ten days from the date hereof.

Hereof, fail not, as you will act to the contrary at your peril.

Witness the Honorable E. McMaster Duer, Chief Judge of the First Judicial Circuit Court of Maryland, the 11th day of April, 1966.

Issued the 7th day of August, 1966.

.....

Clerk

INTERLOCUTORY ORDER

August 30, 1966

The above entitled cause having come on for hearing, testimony having been taken, argument of counsel having been heard, and a written Opinion having been rendered by the Court, it is, by the Circuit Court for Somerset County this 30th day of August, 1966.

ORDERED

That an Interlocutory Injunction be and it is hereby granted for a period of ten (10) months, as follows:

(a) Joseph Carroll, Richard Norton, J. B. Stoner, Connie Lynch, Robert Lyons, and William Brailsford, be and they are hereby each enjoined from holding, sponsoring, or participating in holding or sponsoring, or speaking at any rallies, demonstrations, harangues or public assemblies at, in, or on any public place, street, or park in Somerset County, or in any place in Somerset County to which the public is invited, or is open to the public;

(b) The National States Rights Party, be and it is hereby enjoined from holding, sponsoring, or participating in or holding or sponsoring any rallies, demonstrations, harangues, or public assemblies at, in, or on any public place, street, or park in Somerset County, or any place in Somerset County to which the public is invited, or which is open to the public, at which racial or religious epithets are used, or at which is used other language calculated, intended, or which may reasonably be expected to have the

effect of inciting or advocating violence, rioting, public disorder or breaches of the peace: and it is

FURTHER ORDERED, That this Court retains jurisdiction over the cause and the said parties: to hear and pass on such further proceedings as may come before this Court upon proper petition or motion.

AND IT IS HEREBY FURTHER ORDERED, That all costs of these proceedings be paid by the Defendants.

E. McMASTER DUER,
Judge,

WILLIAM W. TRAVERS,
Judge.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

[redacted] 6

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, AND THE NATIONAL STATES RIGHTS PARTY,

Petitioners,

V.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR RESPONDENTS

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For Respondents.

INDEX

Table of Contents

	PAGE
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statement of the Case	2
Summary of Argument	3
Argument:	
I. The issue now before this Court is moot	5
II. The First and Fourteenth Amendments do not totally prohibit the right of a court to issue a temporary or interlocutory injunction barring persons from participating in public meetings even though such temporary or interlocutory injunction may impose a prior restraint on speech	8
III. The issuance of the injunctions was justified by the existence of a clear and present danger	14
(a) The invitation to riot by the use of force and violence clearly expressed in Petitioners' speeches constituted a sufficient clear and present danger to justify the issuance of the injunctions	14
(b) The vile, abusive and insulting language used by Petitioners in their speeches constituted such "fighting words" as to justify the issuance of the injunctions on the basis of the existence of a clear and present danger	18
Conclusion	21

Table of Authorities

Cases

	PAGE
Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 36 U.S.L.W. 4385 (May 20, 1968)	11
Beauharnais v. Illinois, 343 U.S. 250 (1952)	5, 18
Cantwell v. Connecticut, 310 U.S. 296 (1939)	4, 9, 16, 19
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)	4, 5, 9, 15, 18
Cox v. New Hampshire, 312 U.S. 569 (1941)	14
Feiner v. New York, 340 U.S. 315 (1950)	4, 5, 15, 18
Freedman v. Maryland, 380 U.S. 51, 58 (1965)	10
Kovacs v. Cooper, 336 U.S. 77 (1949)	14
Kunz v. New York, 340 U.S. 290, 299 (1951)	20
Local No. 8-6 v. Missouri, 361 U.S. 363 (1960)	3, 8
Milkwagon Drivers Union v. Meadowmoor Dairies, 312 U.S. 287 (1941)	4, 11, 12, 13
Near v. Minnesota, 283 U.S. 697 (1931)	9
Terminiello v. Chicago, 337 U.S. 1 (1949)	15
Times Film Corporation v. Chicago, 365 U.S. 43, rehearing denied 365 U.S. 856 (1961)	14
Walker v. City of Birmingham, 388 U.S. 307 (1967)	7

Statutes

United States Constitution:	
First Amendment	3, 8, 10, 11, 13, 14
Fourteenth Amendment	3, 8, 10, 13

Miscellaneous

G. L. Kittridge, Shakespeare's Julius Caesar, Ginn, 1939	18
Maryland Rules of Procedure:	
Rule BB 72	6
Rule 845 (c)	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 689

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, AND THE NATIONAL STATES RIGHTS PARTY,

Petitioners,

v.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY COMMISSIONERS OF SOMERSET COUNTY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR RESPONDENTS

OPINION BELOW

The opinion of the Court of Appeals of Maryland appears in full on pp. 114 through 124 of the Appendix, and is also reported in 247 Md. 126, 230 A. 2d 452 (1967).

JURISDICTION

The decision of the Court of Appeals of the State of Maryland was entered on June 7, 1967. The Petition for Writ of

Certiorari was filed on October 5, 1967, and was granted on March 4, 1968. The jurisdiction of this Court was invoked under 28 U.S.C., Section 1257 (3).

QUESTIONS PRESENTED

1. Whether this case is moot.

2. Whether injunctions barring Petitioners from holding public meetings were invalid prior restraints in violation of the First and Fourteenth Amendments.

3. Whether the issuance of the injunctions was justified by the existence of a clear and present danger.

STATEMENT OF THE CASE

Respondents accept the Petitioners' Statement of the Case with the following additions:

The rally at which Petitioners spoke was held a week or ten days after Petitioners had spoken in Baltimore City, (A. 67), and in their speeches, Petitioners made reference to their rallies held in Baltimore (A. 80, 82, 83, 93, 108 and 109). The rally in Princess Anne was similar to the ones in Baltimore in that the nature of it was to stir up the white people against Negroes and Jews (A. 47 and 57). Petitioners anticipated that by holding the rally on successive nights, they would be able to substantially increase the crowd they would draw to the speeches (A. 81).

In general, the relationship between the races in Princess Anne at the time that Petitioners spoke there in 1966 was delicate at best. Tensions had been running high for sometime, and the atmosphere in the community was such that any stirring of the people could have set off a serious riot (A. 38, 39 and 62). As Petitioners spoke, tension in the

crowd rose, among the whites as well as Negroes. On the evening of the 6th the police were able to maintain law and order, but if the rallies had continued, there would not have been sufficient police officers available to properly supervise the rally (A. 38 and 49). If a riot had broken out, police officers would have had to have been taken off of other important duties to control and maintain the tumult (A. 40).

During the course of their speeches, Petitioners made numerous references to the use of force to obtain their goal of white supremacy (A. 83, 86, 92, 94, 105, 108 and 111). The small group of Negroes in the assembled crowd were warned to leave the country. They were warned that they could leave either voluntarily, or "leave in a box" (A. 111).

SUMMARY OF ARGUMENT

I.

The only matter properly before this Court for review is the *ex parte* Temporary Injunction issued in these proceedings by the Circuit Court for Somerset County. This injunction expired by its own terms almost two years ago, and any decision of this Court could not affect the action taken. Accordingly, any decision that this Court could make in the case before it would be vain, and would act in a vacuum. The issue before this Court is moot and properly should be dismissed as such. *Local No. 8-6 v. Missouri*, 361 U.S. 363 (1960).

II.

There is nothing in either the First or the Fourteenth Amendment which prohibits a State court in a proper case from issuing an injunction which imposes a prior restraint on speech.

This Court has historically recognized the right of a State to restrict that class of speech which has never been felt to be constitutionally protected. *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). The right of a State to guard against such speech is not restricted merely to punishment, but the State may act to prevent an abuse of one's right to speak out on matters of public interest and importance. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). If the right to impose prior restraint on certain classes of speech is acknowledged, an appropriate means of imposing such restraint is by a State court injunction proceedings. *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941).

III.

A clear and present danger sufficient to justify imposition of a prior restraint on speech exists where speakers exhort a crowd on to violence and rioting. *Feiner v. New York*, 340 U.S. 315 (1951). The clear and present danger test is not limited to the "fighting words" doctrine of face to face epithets and insults directed at those listening to the speaker. The speeches of Petitioners on August 6, 1966, contained a clear call to their listeners in the audience to react violently to deny others their civil liberties. The call of Petitioners during their speeches to "non-violence" were mere empty words, completely over-shadowed by the call to violence contained in their other remarks. On the basis of the speeches made by Petitioners prior to the granting of the injunction, the Court was justified in finding that Petitioners were inviting civil disturbances, and the Court was justified in granting the injunction.

In addition to the invitation to violence contained in Petitioners' harangues, there was also contained therein sufficient "fighting words" to bring the case within the bounds of *Chaplinsky v. New Hampshire*, 315 U.S. 568

(1942). The threats made to Negroes in the audience listening to Petitioners on August 6, and the vile and abusive language used by Petitioners constituted such "fighting words" to justify the issuance of the injunction. The use of such "fighting words" in their speeches on the 6th, justified the restraint on the Petitioners' speeches under *Chaplinsky v. New Hampshire, Feiner v. New York,* and *Beauharnais v. Illinois.*

ARGUMENT

I.

THE ISSUE NOW BEFORE THIS COURT IS MOOT.

The only question properly before this Court now is an *ex parte* temporary injunction issued by the Circuit Court for Somerset County. Although the Circuit Court issued an Interlocutory Injunction for ten months as well as its Temporary Injunction, the issuance of the Interlocutory Injunction was reversed by the Maryland Court of Appeals and is thus not properly before this Court on appeal by Petitioners.

On the issue of the lapse of time between the initial granting of the *ex parte* Temporary Injunction by the Circuit Court for Somerset County, and the final determination by the Maryland Court of Appeals, reversing in part and affirming in part, Respondents respectfully urge that Petitioners should not at this late stage be allowed to condemn the action taken by the Courts of Maryland on the grounds of delay in prompt redress of their alleged grievances.

The initial *ex parte* Temporary Injunction was granted on the 7th day of August, 1966. By the terms of the Order signed by the Court, the matter was to come on for hearing on August 17th, a period of ten days from the date of the

granting of the *ex parte* Temporary Injunction. It appears from the record that Petitioners did nothing to bring this matter to a hearing more promptly. Under the Maryland Rules of Procedure, a party against whom an *ex parte* injunction has been granted may obtain a hearing on not more than two days' notice. Maryland Rule BB 72. This is an absolute right and if at the time the Temporary Injunction was granted, Petitioners truly wanted to have the matter resolved without delay, they could, and should, have exercised the rights existing under Maryland Rules. There is no charge made, as indeed their could not be, that the rules are applied arbitrarily or improperly so that any request made by Petitioners would not have been honored.

Just as the record is devoid of any showing that Petitioners attempted to have the hearing on the *ex parte* Temporary Injunction heard promptly, so it is devoid of any showing that Petitioners asked that the Maryland Court of Appeals set the appeal ahead on their docket so that it would be heard specially. Under Maryland Rule 845 (c), on appeal a case may be advanced on the Court's docket upon showing of good cause on motion of a party. Petitioners filed no such motion. In fact, though at one point Petitioners filed a Motion to Shorten Time for Transmission of Record, they subsequently filed a Motion to Lengthen the Time for Transmission of Record, thus themselves delaying the appeal of the case.

Respondents submit that Petitioners should not now be allowed to claim that they were denied speedy action on the alleged interference with their rights of free speech. If in fact their free speech was improperly restrained, and if in fact, there was any unreasonable or undue delay in their case being heard through the Courts, Petitioners have waived such delays by their own actions, or more properly, by their own inactions.

Petitioners cite *Walker v. City of Birmingham*, 388 U.S. 307 (1967) to support their argument that this case should not be dismissed as moot, for if it is so dismissed, they allege, they are left with no way of effectively testing their rights. It is interesting to note that in *Walker* this Court took pains to point out that Petitioners therein did not even attempt to follow the proper procedures available to them to establish their rights.

In the opinion for the Court written by Mr. Justice Stewart, it was said that:

> "This case would arise in quite a different constitutional posture if the petitioners, before disobeying the injunction, had challenged it in the Alabama courts, and had been met with delay or frustration of their constitutional claims. But there is no showing that such would have been the fate of a timely motion to modify or dissolve the injunction." p. 318.

In concluding the opinion which affirmed the action of the lower Court, it was said that:

> "But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." p. 321.

Respondents submit that the rationale in *Walker* is analogous to the instant case. Petitioners herein made no attempt to have the *ex parte* Temporary Injunction issued by the Circuit Court for Somerset County heard without delay, nor did they take any steps to have the Maryland Court of Appeals rule on the pending Interlocutory Injunction during the term of the injunction. They now deny that the issue is moot because, they claim, they had no adequate means of having this case considered prior to the expiration of the Injunctions. This claim is without merit, and may be seen to be such by a glance at the Maryland Rules of Procedure and the docket entries in the case.

Respondents earnestly suggest that this Court should follow the precedent set down in *Local No. 8-6 v. Missouri*, 361 U.S. 363 (1960). In that case, this Court declined to consider the issue raised therein on the merits on the grounds that any action it might then take would be wholly ineffectual. It was stated that

> "An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other." 361 U.S. 371.

If indeed this Court intends to review State Court injunction proceedings, it should undertake such a review in a case in which petitioners have carried out their obligation under State procedures to test the efficacy and fairness of such procedures. Absent such test, the issue before this Court should justly be considered as moot.

II.

THE FIRST AND FOURTEENTH AMENDMENTS DO NOT TOTALLY PROHIBIT THE RIGHT OF A COURT TO ISSUE A TEMPORARY OR INTERLOCUTORY INJUNCTION BARRING PERSONS FROM PARTICIPATING IN PUBLIC MEETINGS EVEN THOUGH SUCH TEMPORARY OR INTERLOCUTORY INJUNCTION MAY IMPOSE A PRIOR RESTRAINT ON SPEECH.

The rule of law that Petitioners wish this Court to propound is one which would establish that in no instance may a state Court under any circumstances issue any injunction which would prohibit or restrain any speech. The inherent dangers in any such ruling are staggering, and this Court has never indicated that the First and Fourteenth Amendments go so far as to permit unrestricted speech and assembly, regardless of the nature of the speech, or the possible consequences thereof. To the contrary, this Court has consistently recognized the rights of the States

and their courts to punish or *prevent* certain classes of speech which have never been thought to raise any constitutional problem. These include

> ". . . the libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and they are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942).

Two years before *Chaplinsky* this Court had recognized that State authorities have the power to move against not only violent acts, but also against ". . . words likely to produce violence in others". It was said that:

> "No one would have the heartihood to suggest that the principle of freedom of speech sanctions *incitement to riot* or that religious liberty connotes the privilege *to exhort others to physical attack upon those belonging to another sect.* When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State *to prevent* or punish is obvious." *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940). (Emphasis added.)

Even in *Near v. Minnesota*, 283 U.S. 697 (1931) cited by Petitioners, this Court recognized the inherent power of a State Court to act by way of injunction to restrain certain classes of speech.

> "The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may have all the effect of force." p. 716.

If this Court should recognize, as Respondents suggest it should, that there is nothing in the Constitution, nor even in good common sense, that requires that any man be allowed to say anything, at any time, regardless of the consequences, then we suggest that the proper forum for determining when and to what extent restraints on speech may be applied, is through a court of competent jurisdiction. Surely, it cannot be suggested that only this Court is the one which must decide the issues in all cases, and in the first instance. Certainly, under our basic concept of separation between the state and Federal governments, appropriate State *nisi prius* courts must be given the authority to deal on a case by case basis with restraints on speech.

This Court has recognized the inherent desirability of having a court of competent jurisdiction hear and review issues involving prior restraints. It was said in *Freedman v. Maryland*, 380 U.S. 51, 58 (1965) that:

> "The teaching of our cases is that, because only a judicial determination in an adversary proceeding insures the necessary sensitivity to freedom of expression, only a procedure requiring a judicial determination suffices to impose a valid final restraint."

Moreover, Respondents do not take exception to the power of this Court to set out the guidelines which lower courts, including State courts, must follow when attempting to apply prior restraints to speech.

It is on the issue of the right of a State, and in particular a State court, to deal on a case by case basis with individual situations, that Respondents differ strongly in this case with Petitioners.

Petitioners suggest that the First and Fourteenth Amendments require an absolute prohibition against prior restraints directed towards public meetings. They have at-

tempted to draw strength to their position on this issue from cases dealing with prior restraints on free speech imposed through statutes, and in particular, statutes requiring licenses for the holding of public meetings.[1] The critical difference between a State's right to impose prior restaints on speech statutorily, and for a State Court to review an individual case to determine if in the light of the facts there under consideration, prior restraint of speech by way of injunction is appropriate, was met head on in *Milkwagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287 (1941). Mr. Justice Frankfurter in his opinion for the Court sustaining the action of the Illinois Court in granting an injunction against the Milkwagon Drivers Union said, that:

> "Such a decree, arising out of a particular controversy and adjusted to it, raises totally different constitutional problems from those that would be presented by an abstract statute with an overhanging and undefined threat to free utterance. To assimilate the two is to deny to the states their historic freedom to deal with controversies through the concreteness of individual litigation rather than through the abstractions of a general law." pp. 292-293.

Meadowmoor, supra, dealt with an injunction issued by an Illinois Court enjoining violent acts in connection with

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[1] In the sole case cited by Petitioners in their brief involving an injunction in support of their argument *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 36 U.S.L.W. 4385 (May 20, 1968), this Court specifically noted that:

> "All we decide here is that because the Shopping Center serves as the community business block 'and is freely accessible and open to the people in the area and those passing through,' . . . the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment Rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put."

Further, it should be noted that there was no question of violence in connection with the picketing carried out in that case.

picketing being carried out by the Union. The question presented to the Court was whether a State could choose to authorize its Courts to enjoin acts of picketing which themselves were peaceful, but when the picketing was enmeshed with contemporaneously violent conduct. The evidence disclosed that during the course of the Union dispute, besides peaceful picketing of the stores handling the Meadowmoor Dairies' products, there were more than fifty incidents of violence scattered throughout the area served by Meadowmoor. It was in the light of this evidence that the Illinois Court granted an injunction against the picketing. The Petitioners (Union) argued that the restraint imposed by the Court injunction against picketing interfered with their right of free speech. But the Supreme Court noted that picketing, though in its general context constituted the "working man's means of communication" could, ". . . in a context of violence . . . lose its significance as an appeal to reason and become part of an instrument of force." The Court immediately thereupon noted that, "such utterance was not meant to be sheltered by the Constitution." p. 293.

In *Meadowmoor*, this Court took note of the unquestioned right of the State of Illinois to act to protect its citizens against coercion by fear of violence, and that acts, which in isolation may be peaceful themselves, "may be part of a coercive thrust when entangled with acts of violence." The Court noted that "the picketing . . . was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful." It was specifically recognized that a State court could base the issuance of an injunction on protection against future violence on a history of past misconduct. pp. 294-5.

Respondents recognize that freedom of speech and freedom of assembly are basic to the democratic process under which we live and survive, but we submit that our society and the liberty we enjoy under it, are not advanced by unbridled, irresponsible and uncontrolled violence brought about by speeches and harangues of those bent on destroying our society, and remolding it in the shape as they believe it ought to be. Petitioners' argument that any speech, regardless of its nature, is protected from prior restraint by the First and Fourteenth Amendments, and may not be prevented, but only punished, asks this Court to adopt a rule that the states may not lock the barn *before* the horse is stolen. Or to put the matter more in the context of the current situation, and to again refer to the *Meadowmoor* case, we submit that Petitioners' argument, if sustained by this Court, would prevent the State from placing confidence in its Chancellor's Decree, and compel it to rely exclusively on the policeman's club. *Milk Wagon Drivers Union v. Meadowmoor Dairies, supra,* at p. 296.

Respondents earnestly suggest that there is no authority in law nor basis in principle for the rule Petitioners wish the Court to adopt prohibiting courts from ever enjoining or restraining speech, and that this Court should, as it has in the past, recognized that speech can have the effect of force, and, under certain circumstances must be prevented, as well as punished.

If this Court now adopts a rule as proposed by Petitioners to the effect that a court may not under any circumstances impose injunctive restrictions upon persons who claim interference with First Amendment free speech rights, it is placing greater restrictions on the rights of a court to act, than are placed against legislative bodies.

Although there are numerous cases from this Court voiding State laws requiring that licenses or permits be obtained prior to holding public meetings, this Court has also recognized that a State has the right to adopt proper laws requiring permits for speaking or assembly, even against claims that such laws interfere with the First Amendment right of free speech.

In *Kovacs v. Cooper*, 336 U.S. 77 (1949), this Court held that a Trenton, New Jersey Ordinance prohibiting "loud and raucous noises" was proper and did not go beyond reasonable regulation. Further, against the argument that the Ordinance was a prior restraint on free speech, the Court found that sound amplification in streets and public places is subject to reasonable regulations. See also *Cox v. New Hampshire*, 312 U.S. 569 (1941). Even in the area of censorship, this Court has recognized the right of a State to adopt legislation imposing prior restraints on the lewd and obscene. *Times Film Corporation v. Chicago*, 365 U.S. 43, re-hearing denied 365 U.S. 856 (1961).

III.

THE ISSUANCE OF THE INJUNCTIONS WAS JUSTIFIED BY THE EXISTENCE OF A CLEAR AND PRESENT DANGER.

(a) The invitation to riot by the use of force and violence clearly expressed in Petitioners' speeches constituted a sufficient clear and present danger to justify the issuance of the injunctions.

Respondents agree with Petitioners that if injunctions are to be allowed to be issued by State courts, even against a claim of a prior restraint of free speech, the test to be applied in granting such injunctions is the existence of a clear and present danger. Respondents do, however, except to Petitioners' interpretation of the existing law, and the application of the present facts to that law.

The issue raised by the Injunction granted by the Court below is not whether Petitioners were engaging in provocative speech, with which some of those in the assembled crowd might take exception, and thus act against Petitioners, but whether by their speeches, Petitioners were calling on the assembled crowd to take direct, violent and unlawful action against others. The "fighting words" doctrine expressed in *Chaplinsky v. New Hampshire, supra,* recognized the right of a person to speak his mind, even though by thus speaking he might create dissatisfaction with conditions as they are, "or even stir people to anger." *Terminiello v. Chicago,* 337 U.S. 1, 4 (1949). However, neither *Chaplinsky* nor *Terminiello,* nor any of the other cases setting out the fighting words doctrine adopts a rule which permits persons to speak with the intent of inviting them to riot. To the contrary, this Court has adopted the view that a State does have the right to maintain law and order, and that when a speaker passes the bounds of argument or persuasion, and undertakes to incite riot, the State may act.

> "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and *undertakes incitement to riot,* they are powerless to *prevent a breach of the peace." Feiner v. New York,* 340 U.S. 315, 321 (1951). (Emphasis added.)

Feiner is of particular significance in this case because his conviction for disorderly conduct, which was affirmed by the Supreme Court, was based not on the fact that his views as expressed by him on a public street stirred people to anger, or constituted the "classical fighting words", but because his speech was a clear invitation to the crowd who listened to him, and who agreed with him, to riot.

Respondents submit that in the instant action the injunction issued by the Court below acted not so much to prevent the assembled crowd from attacking Petitioners because of objection to what they were saying, but rather was issued because Petitioners, by their harangue asked the crowd to use violence and force to prevent others from exercising their civil liberties. Though Respondents recognize the high purpose of the liberties of free speech and assembly, they also recognize that:

> "There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the dilusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the States appropriately may punish". *Cantwell v. Connecticut, supra*, at p. 310.

Petitioners' speeches were replete with references to fighting and violence. Only three days before Petitioners spoke in Princess Anne, some of them had spoken in Patterson Park in Baltimore, and their venom had found its mark, inciting the crowd in Patterson Park to riot.[2] This incident was given wide coverage in the news media throughout Maryland, and in their opening remarks to the crowd at Princess Anne on August 6 Petitioners, made note of the fact that they had been charged with starting a riot in Baltimore (A. 82). Petitioner Norton in his speech not only spoke of fighting, but exhorted the crowd on. With reference to the integration movement he hollered, "Don't accept it. Never accept it. Organize. Fight it. You'll win every time. You want to fight? Come on, let's hear it. Want to fight?" To his plea, the assembled crowd responded "Yeah, Yeah"

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[2] See *Lynch v. State*, 2 Md. App. 546, Petition for cert. filed _____.

(A. 86). The white people in the crowd were urged to get guns, to know how to use them and to always have them ready with a good supply of ammunition. They were told they were going to have to use them. They were told that the time had come. That they were going to have to fight to get their rights (T. 94).

Petitioner Lynch also called on the crowd to fight, saying that he was willing to fight and that he would always be willing to do so. He said "yes, hell yes, any way it takes to fight to stop this invasion of our white communities." He then called on the crowd to join with him. He said "How do you folks feel about it out there, huh?" Again the crowd responded to his invitation "(applause)" (A. 105-6). Not satisfied with merely stirring up the whites in the crowd, Norton threatened the Negroes who were standing by listening. He warned them to leave this country voluntarily, or that they would leave in a coffin (T. 111).

In mockery of a request by local police authorities to not mention a pending rape case in which Negroes were accused of raping a white woman, Petitioner Norton recounted a 1933 incident in which a Negro man was alleged to have grabbed a 75 year old white woman and raped her. He vividly recounted to the crowd the lynching that ensued from that incident, and he taunted the assembled crowd with an appeal to false local pride by referring to the fact that when the news media of the day criticized the lynching as an act of barbarism, a number of local citizens displayed stickers that read "I am an Eastern Shore man and damn proud of it" (A. 86). If this were not enough to suggest to the crowd the actions the speakers had in mind, Norton also referred to a then recent incident in Chicago in which, as Norton said, "This white people rose up, kicked hell out of the Niggers, burned 32 cars . . ." (A. 92).

Petitioner Lynch picked up the theme and told the crowd of an incident where a group of white people "went down there and kicked the living — chased them out of there, stoned their cars and a lot of other things" (T. 108).

Petitioners argue that during the course of their speech they cautioned against violence, and specifically asked the crowd to remain orderly. These empty pleas of Petitioners were no more sincere, nor intended to be followed, than were Mark Anthony's cries that he intended not to harm by what he said the honorable men of Rome "whose daggers have stabbed Caesar". Were the Petitioners sufficiently well acquainted with Shakespeare, they might well have been hoping to be able to mutter after their speech, as did Mark Anthony after his:

> "Now let it work. Mischief, thou art afoot,
> Take thou what course thou wilt."[8]

III.

(b) The vile, abusive and insulting language used by Petitioners in their speeches constituted such "fighting words" as to justify the issuance of the injunctions on the basis of the existence of a clear and present danger.

Respondents submit that in addition to the invitation to riot obviously and clearly contained in Petitioners' remarks on the night of August 6, 1966, there were included therein also threats, vile, abusive, libelous and insulting language, sufficient to constitute "fighting words" as to bring this case well within the bounds of the prior decisions of this Court in *Chaplinsky v. New Hampshire, supra; Feiner v. New York, supra* and *Beauharnais v. Illinois*, 343 U.S. 250 (1952). In *Chaplinsky*, the Defendants had used such terms as "damned racketeer" and "damned fascists" and in sus-

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[8] G. L. Kittridge, *Shakespeare's Julius Caesar*. Ginn. 1939.

taining their conviction, Mr. Justice Murphy, at p. 571 in 315 U.S. wrote that:

> "There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality".

Not only does a State have the right to punish one for the use of the "fighting words", but it also has the power to prevent one from using the same, as was recognized by this Court in *Cantwell v. Connecticut, supra,* p. 308.

Also in *Cantwell,* this Court recognized that:

> "Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, . . ." pp. 309-310.

In the present matter, the speeches of Petitioners were replete with not only insults to members of the Negro race, many of whom were in the crowd, but also outright threats to them. When referring to members of the Negro race, Petitioners in their speech were careful to always refer to them as "Niggers", a term which has come to be highly derogatory, insulting and offensive to members of the Negro race. Martin Luther King, the late internationally known and respected Minister, Nobel Prize Winner and recognized leader of the Negro people was contemptuously referred to as "Martin Lucifer Coon".

We submit that read in its entirety, and considered in the context of the language, tone, temperament of the crowd and the speakers, the harangues of Petitioners far exceeded the bounds of constitutionally protected language, and clearly fell within the "fighting words" language which a State may constitutionally limit, prohibit or punish.

In *Kunz v. New York*, 340 U.S. 290, 299 (1951) Mr. Justice Frankfurter eloquently classified the kind of language used by Petitioners in their speeches in Princess Anne on the night of August 6 as follows:

> "* * *. These terse epithets come down to our generation weighted with hatreds accumulated through centuries of bloodshed. They are recognized words of art in the profession of defamation. They are not the kind of insult that men bandy and laugh off when the spirits are high and the flagons are low. They are not in that class of epithets whose literal sting will be drawn if the speaker smiles when he uses them. They are always, and in every context, insults which do not spring from reason and can be answered by none. Their historical associations with violence are well understood, both by those who hurl and those who are struck by these missiles. Jews, many of whose families perished in extermination furnaces of Dachau and Auschwitz, are more than tolerant if they pass off lightly the suggestion that unbelievers in Christ should all have been burned."

The heavy threats, insults, libels and slanders hurled at Negroes in general, and in particular at those in the assembled crowd at the time Petitioners spoke in Princess Anne here under consideration, were such "fighting" words that do not come within any constitutional protection of free speech. Accordingly, the very use of those words themselves justified the issuance of the injunctions by the Circuit Court for Somerset County.

CONCLUSION

For all of the above reasons, this case should be dismissed as moot, or in the alternative, the decision below should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 6

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, and the NATIONAL STATES RIGHTS PARTY,

Petitioners,

—v.—

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY, COMMISSIONERS OF SOMERSET COUNTY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF MARYLAND

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INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Constitutional Provisions Involved	2
Questions Presented	3
Statement of Case	3
Summary of Argument	8
ARGUMENT:	
I. The temporary and interlocutory injunctions barring petitioners' participation in public meetings were prior restraints on speech in violation of the First Amendment	10
II. The injunctions were unconstitutional intrusions on free speech because no clear and present danger existed	20
A. This case is controlled by prior decisions of this Court which forbid interference with provocative political speech	20
B. Petitioners' speech was not subject to curtailment under decisions of this Court which exclude a narrow class of action words from constitutional protection	24
III. This case is not moot	33
CONCLUSION	39

PAGE

Table of Authorities

Cases:

Amalgamated Food Employers Union Local 590 v. Logan Valley Plaza, Inc., 36 U. S. L. Week 4385 (May 20, 1968) 14
Atherton Mills v. Johnston, 259 U. S. 13 (1922) 10, 36

Bantam Books v. Sullivan, 372 U. S. 58 (1963) 12, 33, 35, 39
Barr v. City of Columbia, 378 U. S. 146 (1964) 34
Beauharnais v. Illinois, 243 U. S. 250 (1952) 24, 28, 29, 30, 32
Brown v. Louisiana, 383 U. S. 131 (1966) 19, 24
Brownlow v. Schwartz, 261 U. S. 216 (1923) 35
Burstyn, Inc. v. Wilson, 343 U. S. 495 (1953) 32, 35
Motor Coach Employers v. Missouri, 374 U. S. 74 (1963) 36

Cantwell v. Connecticut, 310 U. S. 296 (1939) 8, 12, 19, 26, 27
Chaplinsky v. New Hampshire, 315 U. S. 568 (1942) 9, 24, 25, 26, 27
Cooper v. Aaron, 358 U. S. 1 (1958) 24
Cox v. Louisiana, 379 U. S. 536 (1965) 9, 19, 21, 22, 23, 24

DeJonge v. Oregon, 299 U. S. 353 (1937) 13, 19

Edwards v. South Carolina, 372 U. S. 229 (1963) 9, 19, 21, 22, 24

Feiner v. New York, 340 U. S. 315 (1950) 16, 17
Fields v. Fairfield, 375 U. S. 248 (1963) 19
Fowler v. Rhode Island, 345 U. S. 647 (1953) 20
Freedman v. Maryland, 380 U. S. 51 (1965) 18, 37, 38

PAGE

Garner v. Louisiana, 368 U. S. 157 (1961) 19, 24, 25
Garrison v. Louisiana, 379 U. S. 64 (1964) 9, 28, 29, 30
Grosjean v. American Press Co., 297 U. S. 233 (1936) .. 11

Hague v. C. I. O., 307 U. S. 496 (1939) 8, 13

Jamison v. Texas, 318 U. S. 413 (1943) 20

Kunz v. New York, 340 U. S. 290 (1950) 8, 12, 13, 20

Lovell v. Griffin, 303 U. S. 444 (1938) 11, 12, 20

Marcus v. Property Search Warrant, 367 U. S. 717 (1961) 38
Marsh v. Alabama, 326 U. S. 501 (1946) 19
Milk Wagon Drivers Union v. Meadowmoor, 312 U. S. 287 (1941) 14, 15

NAACP v. Alabama ex rel. Flowers, 377 U. S. 288 (1964) 34
Near v. Minnesota, 283 U. S. 697 (1931) 8, 10, 12, 13, 15, 18, 20, 23, 33, 38
New York Times v. Sullivan, 376 U. S. 254 (1964) 9, 29, 30, 32
New Yorker Staats-Zeitung v. Nolan, 89 N. J. Eq. 387, 105 Atl. 72 23
Niemotko v. Maryland, 340 U. S. 268 (1951) 12, 20
Norton v. Ensor, 269 F. Supp. 533 (1967) 13

Oil Workers Union v. Missouri, 361 U. S. 363 (1960) ..10, 35, 36

Porter v. Lee, 328 U. S. 246 (1946) 37

PAGE

Rockwell v. Morris, 211 N. Y. S. 2d 25, app. dism'd, 215 N. Y. S. 2d 502, cert. den. 368 U. S. 913 (1961) ..16, 17, 19

Schenck v. United States, 249 U. S. 47 (1919) 23
Schneider v. Irvington, 308 U. S. 147 (1939) 12, 20
Security Mutual Life Co. v. Prewitt, 200 U. S. 446 (1960) 36
Sellers v. Johnson, 163 F. 2d 877 (8th Cir. 1947), cert. denied 332 U. S. 851 (1948) 14
Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 433 (1911) 37
Staub v. Baxley, 355 U. S. 313 (1958) 12

Terminiello v. Chicago, 337 U. S. 1 (1949) 9, 21, 24, 26
Thomas v. Collins, 323 U. S. 516 (1945) 8, 15, 17-18, 20, 34
Thornhill v. Alabama, 310 U. S. 88 (1940) 18, 19
Time, Inc. v. Hill, 385 U. S. 374 (1967) 9, 32

United States v. Alaska S.S. Co., 253 U. S. 113 (1920) 10, 35
United States v. Trans-Missouri Freight Association, 166 U. S. 290 (1897) 37

Walker v. City of Birmingham, 388 U. S. 307 (1967) 9, 33, 34
Wright v. Georgia, 373 U. S. 284 (1963) 34-35

PAGE

United States Constitution:

First Amendment 2, 3, 8, 9, 10, 11, 14, 20, 21, 22, 23, 33, 34, 38

Fourteenth Amendment 2, 3

Miscellaneous:

Blackstone, Commentaries, v. 4, 151 12

Cahn, The Predicament of Democratic Man, 135 (1961) 28

Chafee, Free Speech in the United States, 9 (1941) 11, 25

Chafee, Government and Mass Communications, 116 ..28, 31

Clark, "The Problem of Group Defamation," 13 Cleve-Mar. L. Rev. 1 (1964) 28, 32

Diamond, Federal Jurisdiction to Decide Moot Cases, 94 U. of Pa. L. Rev. 125 (1946) 36

Emerson, "The Doctrine of Prior Restraint," 20 Law and Contemporary Problems, 648 (1955) 17, 25

Emerson, *Toward a General Theory of the First Amendment*, 72 Yale L. J. 877 (1963) 16, 28, 29

Feinberg, "Can Anti-Semitism Be Outlawed," 6 Contemp. Jewish Record 619 (1943) 31

Franklin, "The Origins and Constitutionality of Limitations on Truth as a Defense in Tort Law," 16 Stanford L. Rev. 789 (1964) 30

Kalven, The Negro and the First Amendment, 49 ..... 25, 28

Konvitz, Fundamental Liberties of a Free People, 150 (1957) 28, 32

PAGE

Note, "Verbal Acts and Ideas—The Common Sense of Free Speech," 16 U. Chi. L. Rev. 328 (1949) 27

Reisman, "Democracy and Defamation: Control of Group Libel," 42 Col. L. Rev. 727 (1942) 28, 29

Report of The National Advisory Commission on Civil Disorders, Chap. 12, *Control of Disorder* (1968) 16

Shapiro, Freedom of Speech: The Supreme Court and Judicial Review, 152 (1966) 11

Story on the Constitution, ¶1882, v. 2 .....11, 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 689

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, and the NATIONAL STATES RIGHTS PARTY,

Petitioners,

—v.—

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, COUNTY, COMMISSIONERS OF SOMERSET COUNTY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF MARYLAND

BRIEF FOR PETITIONERS

Opinion Below

The opinion of the Court of Appeals of Maryland is reported at 247 Md. 126 (1967) and is set out in the Appendix at A. 114-124.

Jurisdiction

The judgment of the Court of Appeals of the State of Maryland was entered on June 7, 1967. On September 6, 1967, Mr. Justice [illegible] extended the time within which

to file the Petition for a Writ of Certiorari until October 5, 1967, on which date it was filed. Certiorari was granted on March 3, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(3).

Constitutional Provisions Involved

The Constitution of the United States,

First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Fourteenth Amendment:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Questions Presented

1. Whether injunctions barring petitioners from holding public meetings were invalid prior restraints in violation of the First and Fourteenth Amendments.

2. Whether the issuance of the injunctions was justified by the existence of a clear and present danger.

3. Whether this case is moot.

Statement of Case

Petitioners, members or officers of the National States Rights Party, a political organization, participated in an outdoor political meeting on August 6, 1966, in front of the courthouse in the town of Princess Anne, the county seat of Somerset County, Maryland (A. 16, 75). The rally continued from 7:00 P.M. to 8:25 P.M. (A. 51). No violence occurred (A. 75), and no arrests were made (A. 53, 58). Near the end of the rally Richard Norton, one of the speakers, announced that another rally would be held by the Party on the following evening (A. 111).

On the following day, August 7, 1966, the President and Commissioners of the town of Princess Anne and the County of Somerset secured an *ex parte* injunction forbidding petitioners from holding another meeting for ten days until the matter could be heard in the Circuit Court for Somerset County (A. 7-8). The order instructed peti-

tioners to appear on August 17, 1966, to show cause why they should not be permanently enjoined from holding such rallies in Somerset County (A. 7-8).

At the rally of August 6, 1966,[1] the aims and tenets of the National States Rights Party were described by Party attorney, J. B. Stoner (A. 87), as follows (A. 89-90):

> Now the National States Rights Party is a political party. In some parts of the country we run our white supremacy candidates on the general election ballot and in other places we run in the Democratic and Republican primaries. We intend to gain political power and to repeal not only the Civil Rights Act of 1965 but all of the Civil Rights Acts including the one that the distinguished Congress is now passing through.

In keeping with these aims, the speakers variously exhorted their hearers to "organize [to] win every single political objective" (A. 111) and to "organize intelligently, fight intelligently" (A. 93). Governor Agnew and "Joe Alton . . . down in Annarundel County" were specifically criticized for their plans regarding integration (A. 84). The Party intended to "fight in the Courts every legal way we can to smash these vermin, to smash them (sic) (inaudible) plan to assimilate the white race" (A. 84). They vowed to "continue to speak for white America" (A. 102), and beyond "one or two speeches, we're going to be in Court Monday" to attack as illegal injunctions against their picketing while courts nevertheless allow Negroes to picket (A. 102). They counterposed "white power" to "black power" (A. 89), and told the crowd that "The National

[1] The entire meeting was recorded by state officers. The tape was introduced at the August 17, 1966 hearing (A. 75).

States Rights Party advocates every legal, legitimate and political (inaudible). in the book to stop race-mixing" (A. 89).

During the rally the Party informed the audience how to become members (A. 84, 109, 111). Party literature was also distributed (A. 90).

Party speakers discussed the white supremacist view on several political issues, including school integration (A. 85, 87), federal aid (A. 85, 88, 89), federal school desegregation guidelines (A. 88, 89), the Rumford Fair Housing Act in California (A. 103), and the Negro movement and its demands (A. 91-92, 96-97), all of which were denounced. In particular the speakers emphasized the local political situation, several times exhorting the crowd to "phone . . . write, [and] buttonhole John Bond," the head of the local school system, to bring political pressure on him to the end that local schools not be integrated (A. 92, 94-95, 110). Their advice to Negroes was to "start taking reservations for Africa," where they should migrate (A. 111).

Frankly advocating the doctrine of white supremacy, the speakers nevertheless expressly cautioned their audience against resort to violence, for "they think we advocate it, we don't. This is a political battle pure and simple, that's all it is" (A. 87). They urged: "I want you people really hollaring. No violence, just hollering" (A. 95). They advocated "a non-violent shout, that every local politician is going to hear" (A. 111).

Each speaker in turn referred to Negroes as "niggers". Rev. Charles (Connie) Lynch, one of the rally speakers, explained that "every time you call a nigger a colored person, you are apologizing to them because they're black"

(A. 97). Jews were also vilified (A. 96) and the United States Supreme Court caustically criticized (A. 96, 99).

At the August 17th hearing, the County Attorney informed the Court that his witnesses would testify about "what might occur should these demonstrations, rallies, and speeches be allowed to continue" (A. 28). The testimony at the hearing showed that about 25% of the maximum audience of 200 were Negroes (A. 46). According to the testimony of a plainclothes policeman assigned to the rally area, the Negroes remained apart from the whites and "did not mingle among the other groups" (A. 57). Though the Negroes were visibly "disturbed and angry," they "stayed over on this side of the street" (A. 57). There was tension among the whites, but there was no breach of the peace, cause for arrests, or need for police intervention (A. 53, 58, 59). About 60 police officers, including reenforcements from other counties, were on hand (A. 47).

Over the objection of petitioners' counsel, the trial court admitted evidence of unrest and violence in Somerset County in February, 1964, two and a half years earlier, during mass civil rights demonstrations by students at a nearby Negro college demanding that public accommodations be open to all regardless of race (A. 31-39). At that time the violence had been preceded by talk of "murder" and "killing" in "many sections of town" (A. 33). When a disturbance involving several hundred Negro students and local whites occurred, local police were able to bring it under control without reenforcements (A. 37). Neither the National States Rights Party nor the individual petitioners were in Somerset during the 1964 incidents (A. 36). The college was not in session when petitioners spoke

on August 6, 1966 (A. 60). Since the February 1964 demonstrations, there had been little racial tension in the town (A. 65). On cross-examination, an officer testified that race relations before the incidents of February 1964 and thereafter had been good (A. 58).

Paul J. Randall, a captain in the Maryland State police, testified that before the rally, one of the participants, Joseph Carroll, inquired about the local law regarding the use of a public address system and the sponsorship of a rally on the street (A. 44). Captain Randall informed Carroll that the town manager had said that no local ordinance prevented the rally (A. 44). Captain Randall requested Carroll and Stoner not to mention two pending court cases in which Negroes were accused of raping whites (A. 50). He testified that in fact no mention of these cases was made (A. 51). Mention was made of a rape of a seventy-six year old woman thirty-three years ago and of the lynching that followed, but the speaker said: "I am not advocating this but I am just recounting a bit of history" (A. 86). The rally ended ten minutes after a prearranged signal passed from Captain Randall to Carroll when Captain Randall nodded to Carroll that "tension was building" (A. 53).

On August 30, 1966, the Circuit Court for Somerset County issued an order barring the individual petitioners from "holding or sponsoring or . . . speaking" at any public gathering or in any public place on any subject for ten months (A. 19). The Party was enjoined for ten months from participating in public gatherings at which "racial or religious epithets" or language expected to lead to rioting or disorder were used (A. 19).

On June 7, 1967 the Court of Appeals of Maryland affirmed the temporary order of August 7, 1966 but reversed the interlocutory order of August 30, 1966, holding that "the period of time was unreasonable and that it was arbitrary to assume that a clear and present danger of a civil disturbance and riot would persist for ten months" (A. 124).

The constitutional questions presented were raised by petitioners at trial (A. 29) and explicitly rejected by the trial court in its opinion (A. 17-18). Petitioners again raised the constitutional issues in their Motion to Shorten Time for Transmission of Record (A. 22). The same questions were raised on appeal and treated fully on the merits in the opinion of the court below (A. 114-124).

Summary of Argument

I.

The First Amendment forbids prior restraint of speech. *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Kunz* v. *New York*, 340 U. S. 290 (1950). An injunction based on previous speeches which produced neither violence nor a clear threat of violence is especially to be condemned under First Amendment principles. *Thomas* v. *Collins*, 323 U. S. 516 (1945). Such prior restraint is not saved from unconstitutionality by virtue of its being subject to judicial oversight and review, for the harm to speech is in the restraint itself. *Cantwell* v. *Connecticut*, 310 U. S. 296 (1939). Speech may be punished in the case of violence or clear and present danger of violence but the state may not restrain speech because it believes that violence may occur. *Hague* v. *C. I. O.*, 307 U. S. 496 (1939).

II.

The First Amendment protects provocative speech no less than mild speech. *Terminiello* v. *Chicago*, 337 U. S. 1 (1949). The decisions of this Court have always required that speakers with unpopular views be protected, not enjoined because some members of the public may become angered or aroused at their views. *Cox* v. *Louisiana*, 379 U. S. 536 (1965).

Petitioners' prior speeches could not constitutionally form the basis for enjoining a later rally based on the doctrine prohibiting a narrow class of action words called "fighting words." *Chaplinsky* v. *New Hampshire*, 315 U. S. 568 (1942). Petitioners' rally consisted of protected expression of political views and solicitation to join a lawful political party, not face-to-face epithets between individuals. Discussion of racial and religious groups is a matter of public interest and is protected speech even though provocative and offensive to some. *Edwards* v. *South Carolina*, 372 U. S. 229 (1963); *New York Times* v. *Sullivan*, 376 U. S. 254 (1964); *Garrison* v. *Louisiana*, 379 U. S. 64 (1964); *Time, Inc.* v. *Hill*, 385 U. S. 374 (1967).

III.

Petitioners, who have followed the procedures for orderly review announced in *Walker* v. *City of Birmingham*, 388 U. S. 307 (1967), should not on that account be penalized by an inappropriate invocation of the mootness doctrine. If an injunction may not be tested by violating it, then it should be subject to appeal where First Amendment rights are at stake.

The injunction at issue here is not moot, for the existing controversy continues, unabated by an act of the parties,

the effect of a subsequent law or the passage of time. *United States* v. *Alaska S.S. Co.*, 253 U. S. 113 (1920); *Oil Workers Union* v. *Missouri*, 361 U. S. 363 (1960); *Atherton Mills* v. *Johnston*, 259 U. S. 13 (1922). Petitioners are effectively barred from expressing their political philosophy in Somerset County, Maryland. Further, the *ex parte* temporary injunction comprises a new and menacing device inviting public officials to stifle First Amendment expression unless it is disapproved.

ARGUMENT

I.

The temporary and interlocutory injunctions barring petitioners' participation in public meetings were prior restraints on speech in violation of the First Amendment.

Although petitioners' meeting of August 6, 1966, resulted in no disorder or threat of disorder, respondents secured an *ex parte* temporary injunction prohibiting an announced rally for the following evening. The injunction remained in effect for twenty-three days until the court found it convenient to hold a hearing, write an opinion, and issue an interlocutory injunction. Thus, thirty-seven years after this Court condemned prior restraints upon First Amendment activity in *Near* v. *Minnesota*, 283 U. S. 697 (1931),[2] the forbidden doctrine has been restored in the State of Maryland.

Mindful of the history surrounding the adoption of the First Amendment, this Court has examined with special care cases involving restraint upon First Amendment ac-

[2] See 283 U. S. at 719, n. 11, where this Court noted the widespread acceptance among the states of the "general principle . . . of immunity from previous restraints" even before *Near*.

tivity. Although the disfavor in which the Court holds prior restraints "cannot be regarded as exhausting the guaranty of [First Amendment] liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision." *Lovell* v. *Griffin*, 303 U. S. 444, 451-452 (1938).[3] That "leading purpose" reflects the use of prior restraints under British law of which the draftsmen of the Constitution were especially aware.[4] In reaction to prior censorship as practiced in England,[5] the framers developed a concept of free expression whose essence was immunity from prior restraint. Blackstone described it as

> ". . . consist[ing] in laying no *previous* restraints upon publications and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity . . . . [T]he only plausible argument heretofore used for restraining the just freedom of the press, 'that it was necessary to prevent the daily abuse of it.' will entirely lose its force when it is shown that the press can not be abused by any bad purpose without incurring a suitable punishment; whereas it

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[3] "If anything at all is clear about what the founders meant by the language of the First Amendment, it is that it was designed to prohibit prior restraints." Shapiro, Freedom of Speech: The Supreme Court and Judicial Review, 152 (1966).

[4] For a discussion by the Court of the significance of the history of prior restraints in England on the development of the First Amendment, see *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-249 (1936). See also Chafee, Free Speech in the United States, 9-12 (1941).

[5] See Story on the Constitution, ¶1882, v. 2.

never can be used to any good one under the control of an inspector."[6]

Story accepted the Blackstonian view that free speech is a matter of immunity from prior restraint.[7] But this Court has said that "[t]he criticism upon Blackstone's statement has not been because immunity from previous restraint upon publication has not been deserving of special emphasis, but chiefly because that immunity cannot be deemed to exhaust the conception of the liberty guaranteed by state and federal constitutions." *Near* v. *Minnesota, supra* at 714-715. The special disfavor of prior censorship is embodied in the rule that "[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books* v. *Sullivan*, 372 U. S. 58, 70 (1963). See also *Lovell* v. *Griffin, supra*, at 451; *Schneider* v. *Irvington*, 308 U. S. 147, 164 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1939); *Niemotko* v. *Maryland*, 340 U. S. 268, 273 (1951); *Kunz* v. *New York*, 340 U. S. 290, 293 (1950); *Staub* v. *Baxley*, 355 U. S. 313, 321 (1958).

It has further been held that prior restraints on speech are not justified because of apprehensions of disorder. In *Kunz* v. *New York, supra*, at 292, the speaker had "ridiculed and denounced other religious beliefs in his meetings." His permit to speak was revoked and he was subsequently convicted for holding a meeting without a permit. In that case, the Court disapproved as a basis for prior restraint even past *disorder*,[8] quite apart from past *speech*:

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[6] Blackstone, Commentaries, v. 4, 151-152.

[7] Story on the Constitution, *supra*, 1882-1889.

[8] In a recent decision affecting petitioners at bar, the United States District Court for the District of Maryland, relying on

> "The court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant's religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence." *Ibid.*

In *Near* v. *Minnesota, supra,* at 720, the Court said that previous restraint against speech is not justified even where "charges are made of derelictions which constitute crimes." Compare *DeJonge* v. *Oregon,* 299 U. S. 353 (1937). There "The Saturday Press" was ordered "abated" as a public nuisance based on a finding that it had been a "malicious, scandalous and defamatory newspaper," 283 U. S. at 706. The Court said that subsequent punishment was the only valid sanction. In *Hague* v. *C. I. O.,* 307 U. S. 496, 516 (1939), the Director of Safety had refused a permit to

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decisions of this Court, required a permit to be issued in Baltimore, despite evidence of past disorder at petitioners' rallies. *Norton* v. *Ensor,* 269 F. Supp. 533 (1967). There, as here, the denial of the permit had been based on "previous activities of the applicants and the Party . . . [s]pecifically . . . a tape recording and films of the rallies . . . ." The Court found that:

> Defendant considers, and the Court agrees, that the evidence shows that speakers at those rallies incited persons in attendance to riot. Many participants in the rallies did riot, attacking Negroes who lived about six blocks from the site of the rally. Photographs of such attacks were offered in evidence.
>
> Later in the summer a similar rally was held in Princess Anne, Somerset County, Maryland, where inflammatory speeches were made but violence was averted by the arrival of a large number of State Troopers. *Id.* at 536.

Nonetheless, the District Court held the relevant ordinance, in part, an "impermissible prior restraint upon plaintiffs' right of free speech and assembly," *id.* at 537, and ordered the permit to be issued.

speak in order to prevent "riots, disturbances, or disorderly assemblage." The Court acknowledged that "prohibition of all speaking will undoubtedly 'prevent' such eventualities," but required the State to exercise its "duty to maintain order in connection with the existence of the right."[9] Thus, even where, as here, officials allegedly seek to prevent disorder by restraining speech, the Court has found that that risk must be subordinated to First Amendment rights.

Milk Wagon Drivers Union v. *Meadowmoor*, 312 U. S. 287 (1941), relied on by the court below, is not to the contrary. The injunction affirmed there was not issued following First Amendment activity unaccompanied by violence, as in the instant case.[10] Rather, the Court found that the pickets had *themselves* engaged in extensive violence involving "window-smashings, bombings, burnings, the wrecking of trucks, shootings and beatings." *Id.* at 292. The essential ingredient of the *Meadowmoor* injunction, as Mr. Justice Frankfurter repeated throughout his opinion, was "contemporaneously violent conduct" in a labor dispute where picketing had become part of a "coercive thrust" and a "continuing intimidation" against storekeepers who would not deal with union drivers. *Id.* at 292, 294, 298.

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[9] Compare *Sellers* v. *Johnson*, 163 F. 2d 877 (8th Cir. 1947), cert. denied 332 U. S. 851 (1948), where members of Jehovah's Witnesses sued to bar local authorities from preventing them from holding a meeting after fights had developed at a prior meeting and word had come that hundreds of people would attempt to prevent another meeting. The Court of Appeals said: "Certainly the fundamental rights to assemble, to speak, and to worship cannot be abridged merely because persons threaten to stage a riot or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised." *Id.* at 881.

[10] Compare *Amalgamated Food Employers Union Local 590* v. *Logan Valley Plaza, Inc.*, 36 U. S. L. Week 4385 (May 20, 1968).

At the same time Mr. Justice Frankfurter expressly reaffirmed the invalidity of prior restraints against speech and the vitality of the prohibitions announced in *Near* v. *Minnesota, supra.* Although "future coercion" could be prevented, he said:

> "Right to free speech in the future cannot be forfeited because of disassociated acts of past violence. Nor may a state enjoin peaceful picketing merely because it may provoke violence in others. *Near* v. *Minnesota,* 283 U. S. 697, 721, 722; *Cantwell* v. *Connecticut,* 310 U. S. 296." 312 U. S. at 296.

In *Thomas* v. *Collins,* 323 U. S. 516 (1945), four years after *Meadowmoor,* the Court demonstrated that it had not retreated from the principles of *Near.* Thomas had been held in contempt of a restraining order—issued *ex parte,* as here—because he had delivered a speech without complying with a Texas statute regulating the solicitation of membership in trade unions. The Court found that:

> "If the exercise of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. . . . We think that a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." 323 U. S. at 540.

The Court's admonitions against prior restraint were the basis for requiring the issuance of a permit to use a park for a speech in *Rockwell* v. *Morris*, 211 N. Y. S. 2d 25, appeal dismissed, 215 N. Y. S. 2d 502, cert. den. 368 U. S. 913 (1961). Rockwell, "reputedly, a rabid racist", had been denied a permit by the lower court because he had

> ". . . by speech and pamphlet accused more than two and a half million residents of New York City of being traitors, identified by their ethnic and religious classification; that he was a 'self-confessed, advocate of violence and Hitlerian methods;' and that if he spoke it was 'inevitable that public disorder and riot will result.'" 211 N. Y. S. 2d at 28.

The New York Appellate Division held that Rockwell's speech could be penalized only after he "speaks criminally" regardless of what was known of the "shocking quality" of his views . . . and "even their alarming impact." *Id.* at 28, 35.

Feiner v. *New York*, 340 U. S. 315 (1950), demonstrates that maintenance of order by appropriate police action, based upon the imminence of actual danger, is sufficient.[11]

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[11] This is especially true today when sophisticated preventive police measures are readily available. As Prof. Emerson has pointed out:

> The basic decision made by the framers that adequate protection can be afforded the interest in internal order through sanctions confined to the illegal action itself applies with even greater force to the problem in our times. The powers and resources of modern government, if exercised with skill and vigor, are sufficient to the task . . . . A community which sincerely undertakes to maintain law and order without suppressing expression possesses the powers and techniques to accomplish that task. Emerson, *Toward a General Theory of the First Amendment*, 72 Yale L. J. 877, 932 (1963).

See also Report of The National Advisory Commission on Civil Disorders, Chap. 12, *Control of Disorder* (1968).

Feiner addressed an "open-air meeting" before a "crowd of about seventy-five or eighty people, both Negro and white . . . . [P]etitioner . . . speaking in a loud, high-pitched voice . . . gave the impression that he was endeavoring to arouse the Negro people against the whites, urging that they rise up in arms and fight for equal rights." *Id.* at 316, 317. The Court upheld Feiner's conviction for disorderly conduct after its examination of the record convinced it of the presence of actual danger despite the attempts of the police to control the crowd. Finding that the petitioner had "undertake[n] incitement to riot," the Court concluded that the police were not "powerless to prevent a breach of the peace." *Id.* at 321. The same remedy was available to the Maryland police. They did not employ it because there was no disturbance at petitioners' rally. The injunction against future rallies was an unconstitutional substitute for police protection and planning.

The court below avoided the clear lesson of this Court's decisions, and of the *Rockwell* case, by describing this case as one not involving "prior restraint, as in *Rockwell*", because "[t]he restraint was not imposed upon the speakers until after the matter was given the disciplined review of the court" [12] (A. ——). Thus, the Maryland Court, carving out an exception to the doctrine of prior restraint, held that courts are to be entrusted with a function denied to other agents of the state. Yet if "[n]o one may be required to obtain a license in order to speak," *Thomas* v.

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[12] But an authoritative article on prior restraint states:

> "A second form of prior restraint involves judicial officials and is based upon the injunction or similar judicial process, enforced through a contempt proceeding."

Emerson, "The Doctrine of Prior Restraint," 20 Law and Contemporary Problems, 648, 655 (1955).

Collins, supra at 543 (Douglas, *J.*, concurring), must one nevertheless answer to a court to enjoy the right?

This Court recognized long ago that prior restraint is a misuse of state power no matter how it is exercised.[13] The question was settled in *Near*, where the statute at issue was sought to be justified by a procedure permitting a hearing before an injunction issued to restrain publication. This Court said that a judicial hearing to determine the validity of prior restraint in advance of an injunction would itself give courts ominous power over speech:

> "The statute in question cannot be justified by reason of the fact that the publisher is permitted to show [cause] before injunction issues . . . . If such a statute, authorizing suppression and injunction on such a basis, is constitutionally valid, it would be equally permissible for the legislature to provide that at any time the publisher of any newspaper could be brought before a court, or even an administrative officer . . . and required to produce proof . . . . The recognition of authority to impose previous restraint upon publication in order to protect the community against the circulation of charges of misconduct . . . necessarily would carry with it the admission of the authority of the censor against which the constitutional barrier was erected." 283 U. S. at 721.[14]

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[13] Compare *Freedman* v. *Maryland*, 380 U. S. 51, 55 (1965), where the Court expressed concern that prior restraint is made the more onerous because of the "risk of delay . . . built into the Maryland [film censorship] procedure." The Court cited a reported case in which "the initial judicial determination has taken four months and final vindication of the film on appellate review, six months." The case at bar has been in the courts nearly two years.

[14] "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." *Thornhill* v. *Alabama*, 310 U. S. 88, 97 (1940).

Cantwell v. *Connecticut, supra,* at 306, provided the occasion for a similar warning that the "availability of a judicial remedy" cannot provide the basis for prior restraint:

> "A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action." [15]

If state courts were empowered to issue injunctions against speakers the power would insure the infringement of the rights of locally unpopular speakers, for it is they alone who would be held to answer to courts before they speak. The approval of such state power would sanction the discriminatory enforcement which has so often been forbidden when states chose to construe criminal statutes against unpopular speakers. *DeJonge* v. *Oregon, supra; Cantwell* v. *Connecticut, supra; Marsh* v. *Alabama,* 326 U. S. 501 (1946); *Brown* v. *Louisiana,* 383 U. S. 131 (1966); *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Cox* v. *Louisiana,* 379 U. S. 536 (1965); *Garner* v. *Louisiana,* 368 U. S. 157 (1961) (Harlan, *J.*, concurring). Like the statute condemned in *Thornhill* v. *Alabama, supra,* at 98, the power would "readily lend itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, result[ing] in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within their purview." See *Fields* v. *Fairfield,* 375 U. S. 248 (1963).

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[15] *Rockwell* similarly denied power of prior restraint to courts along with "the policemen or the Commissioner", leaving them to "provide punishment under criminal standards for the unlawful act already committed." 211 N. Y. S. 2d at 37.

Preferred First Amendment rights, enjoying paramount protection even from punishment, have a special "sanctity" from prior restraint. *Thomas* v. *Collins, supra* at 530. Once prior restraints are imposed by the state, irreversible harm is done, for the harm is the restraint itself. *Lovell* v. *Griffin, supra; Schneider* v. *Irvington, supra; Jamison* v. *Texas,* 318 U. S. 413 (1943); *Niemotko* v. *Maryland, supra; Fowler* v. *Rhode Island,* 345 U. S. 647 (1953). The result is "suppression—not punishment." *Kunz* v. *New York, supra,* at 295. This Court should reaffirm the principle that "[s]ubsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege." *Near* v. *Minnesota, supra,* at 720.

II.

The injunctions were unconstitutional intrusions on free speech because no clear and present danger existed.

A. *This case is controlled by prior decisions of this Court which forbid interference with provocative political speech.*

Though we have argued for an absolute prohibition against prior restraints directed towards public meetings, the court below justified the restraint in this case because "the lower court acted in the face of a clear and present danger in issuing the temporary restraining order . . ." (A. 121). If any restraints are to be allowed at all, we accept for the purposes of this case that the presence of a clear and present danger should be the measure. No such danger existed on the facts of this case.

The First Amendment has long been tested against provocative expression. Our constitutional tradition has tol-

erated both the most provocative speech, *Terminiello* v. *Chicago*, 337 U. S. 1 (1949), and unpopular speech, *Edwards* v. *South Carolina, supra.* The decisions in which the Court has charted the expansive boundaries of speech under the First Amendment have often involved race or religion, subjects liable to arouse unusual passions. In *Terminiello* v. *Chicago, supra,* the speaker was an advocate of racism and anti-semitism in the postwar period when popular sensibilities were especially hostile to his views. The police were unable to prevent several disturbances among the crowd of a thousand protesters who had gathered.[16] But the court announced a standard that has guided it in free speech cases:

> "Accordingly a function of free speech under our system is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." 337 U. S. at 4.

Like *Terminiello,* petitioners belong to a controversial minority whose political philosophy embodies unpopular views about Negroes and Jews. But if they are to be enjoined from expressing their views, then other unpopular minorities such as those protected by this Court in *Edwards* v. *South Carolina, supra,* and *Cox* v. *Louisiana, supra,* will not long avoid similar restraints.

Edwards relied on *Terminiello* to protect a Negro minority in the South from punishment for the "peaceful ex-

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[16] The extent of actual disturbance in *Terminiello* is in decided contrast to the facts of the case at bar. See 337 U. S. at 14-16 (Frankfurter, J., dissenting).

pression of unpopular views" against segregation. 372 U. S. at 237. Evidence of [petitioners'] "'boisterous,' 'loud,' and 'flamboyant' conduct," of "'a dangerous situation . . . really building up'" and of "'an actual interference with traffic and an imminently threatened disturbance of the peace of the community'" were insufficient to override First Amendment rights. *Id.* at 233, 239. This Court looked instead to the entire record, which like the record here, showed that "There was no violence or threat of violence on [petitioners'] part, or on the part of any member of the crowd watching them. Police protection was 'ample.'" *Id.* at 236. Refusing to substitute its familiarity "with the almost spontaneous combustion in some Southern communities in such a situation",[17] the court reversed the convictions of the speakers for breach of the peace.

In *Cox* v. *Louisiana, supra,* the racial issue had pitted 1500 angry Negro college students against a crowd of "'muttering' and 'grumbling' . . . white onlookers." 379 U. S. at 543. Of particular relevancy to the instant case was the Court's explicit rejection of the lower court's reasoning that general community tensions required the arrests there:

> "[T]he trial judge . . . stated as his reason for convicting Cox of disturbing the peace that '[i]t must be recognized to be inherently dangerous and a breach of the peace to bring 1,500 people, colored people, down in the predominantly white business district in the City of Baton Rouge and congregate across the street from the courthouse and sing songs as described to me by the defendant as the CORE national anthem carry-

[17] 372 U. S. at 244 (Clark, *J.*, dissenting).

> ing lines such as 'black and white together' and to urge those 1,500 people to descend upon our lunch counters and sit there until they are served." *Id.* at 536.

The court below relied on just this kind of generalized "testimony . . . as to the temper of the community" over a number of years.[18] Wide-ranging testimony of disturbances from two years before arising from civil rights sit-in demonstrations was allowed, although none of the stale events reported arose because of inciting speech.

The court below conceded that "most of the time" the county in which petitioners spoke "is a tranquil community" (A. 115). The same rally might have elicited a more volatile response in other communities. Words spoken in a small rural locale may well settle differently than in a swollen ghetto metropolis. But this Court has always depended on the record before it in First Amendment cases because "the character of every act depends upon the circumstances in which it is done." *Schenck* v. *United States*, 249 U. S. 47, 52 (1919).

The Court's warning in *Near* is particularly apt:

> "If the township may prevent the circulation of a newspaper for no reason other than that some of its inhabitants may violently disagree with it, and resent its circulation by resorting to physical violence, there is no limit to what may be prohibited."[19]

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[18] The more specific testimony as to the reaction of the community during the rally revealed no more than "a very tense atmosphere" (A. 122). But there was an ample police force of 60 on hand (A. 47), and the Negroes present, though angered, remained in a group apart from the whites (A. 57).

[19] 283 U. S. at 722, quoting *New Yorker Staats-Zeitung* v. *Nolan*, 89 N. J. Eq. 387, 388, 105 Atl. 72.

This is particularly the case in a diverse society whose health and dynamism is inevitably measured by its tolerance of controversy. This Court has not silenced that controversy in the past when minorities have sought to put forth unpopular views. *Garner* v. *Louisiana, supra; Brown* v. *Louisiana, supra; Edwards* v. *South Carolina, supra; Cox* v. *Louisiana, supra.* It follows that if "law and order are not . . . to be preserved by depriving . . . Negro children of their constitutional rights," *Cooper* v. *Aaron,* 358 U. S. 1, 16 (1958), those who oppose the movement for Negro rights must share the constitutional protection which this Court has made available to all.

B. Petitioners' speech was not subject to curtailment under decisions of this Court which exclude a narrow class of action words from constitutional protection.

The court below, rejecting *Terminiello* and its progeny, chose to follow *Chaplinsky* v. *New Hampshire,* 315 U. S. 568 (1942), and *Beauharnais* v. *Illinois,* 243 U. S. 250 (1952). Neither of these narrowly drawn decisions are properly the basis for prior restraint based upon speech at a past political rally where violence neither occurred nor was imminent.

The "fighting words" doctrine in *Chaplinsky* was narrowly limited to

> "... certain well-defined and narrowly limited classes of speech . . . the lewd and obscene, the profane, the libelous, and the insulting . . . 'face-to-face words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitute a breach of the peace by the speaker . . .'" 315 U. S. at 572-573.

The doctrine has been interpreted to mean "the use of speech inseparably locked with action" between individuals.[20] But the court below broadened the meaning of *Chaplinsky* to include political speech addressed to a crowd. That this expansion exceeds the bounds drawn by Mr. Justice Murphy in *Chaplinsky* has been demonstrated in a study tracing the origin of the "fighting words" doctrine. Prof. Kalven traced the "Murphy passage back to its source . . . a paragraph in Chafee's *Free Speech in the United States,*" and found that Chafee had been concerned with

> ". . . words like obscenity, profanity and gross libels upon individuals because the very utterance of such words is considered to inflict a present injury upon listeners, readers or those defamed or else to render highly probable an immediate breach of the peace. This is a very different matter from punishing words because they express ideas which are thought to cause a future danger to the state." [21]

Kalven concludes from this that

> "What Chafee, and hence Murphy, is saying is really that a certain class of face-to-face epithets are . . . per se freighted with a clear and present danger." *Op. cit.* at 49-50.

Petitioners' words were not such epithets calculated to create a clear and present danger. The rally, however dis-

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[20] Emerson, *op. cit.* at 932. Such action words, Prof. Emerson says, include "sheer threats of immediate physical harm delivered on a person-to-person basis." *Ibid.* See also *Garner* v. *Louisiana*, *supra*, at 196.

[21] Quoted in Kalven, The Negro and the First Amendment, 49.

quieting, solicited members for peaceful activity in a political party (A. 109-110) and concerned such issues as federal school desegregation guidelines (A. 88-89) and the Rumford Fair Housing Act in California (A. 103); it bore no resemblance to Chaplinsky's face-to-face taunt that the officer who took him into custody was a "'God damned racketeer' and 'a damned Fascist.'" 315 U. S. at 569. Far from making a political speech, Chaplinsky was engaging in face-to-face personal vilification. Petitioners, however, used the word "nigger" and similar words as part and parcel of their political philosophy under which they believed that "every time you call a nigger a colored person, you are apologizing to them for being black" (A. 97). *Chaplinsky* was never meant to reach such political speech, which, just as much as milder political speech, affects the "vitality of civil and political institutions in our society." *Terminiello* v. *Chicago, supra,* at 4.

Petitioners' case is analogous not to *Chaplinsky* but to *Cantwell* v. *Connecticut, supra.* Cantwell requested two pedestrians on the street to listen to a record describing a book entitled "Enemies." The Court said that:

> "The record played by Cantwell embodies a general attack on all organized religious systems as instruments of Satan and injurious to man; it then singles out the Roman Catholic Church for strictures couched in terms which naturally would offend not only persons of that persuasion, but all others who respect the honestly held religious faith of their fellows. The hearers were in fact highly offended. One of them said he felt like hitting Cantwell and the other that he was tempted to throw Cantwell off the street." 310 U. S. at 309.

Petitioners' rally had the *Cantwell* quality of provocative, even offensive criticism of another group, not the *Chaplinsky* quality of face-to-face vilification of another person unrelated to the expression of a point of view. *Cantwell* elevated the distinction to constitutional dimension:

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenet of one man may seem the rankest error to his neighbor. To persuade others to his point of view, the pleader, as we know, at times resorts to exaggeration, to vilification . . . and even to false statement. But the people of this nation have ordained . . . that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." 310 U. S. at 310.

Thus, what has been said of *Cantwell* in relation to *Chaplinsky* is equally true of the distinction between petitioners' case and *Chaplinsky*:

> "His exaggeration and vilification were excesses of discussion and persuasion which a society interested in preserving freedom of speech had to accept. . . . The two cases [*Cantwell* and *Chaplinsky*] dramatically point out the difference between the word as act and the word as idea." [22]

Petitioners' rally did not invite violent action, but cautioned against it (A. 87, 95, 111). It is true that their words were passionately directed against the doctrine of racial tolerance they abhor. But this Court has allowed that:

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[22] Note, *Verbal Acts and Ideas—The Common Sense of Free Speech*, 16 U. Chi. L. Rev. 328, 331 (1949).

> "Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did . . . utterances honestly believed contribute to the free exchange of ideas and the ascertainment of truth."[23]

If petitioners' provocative political speech can be enjoined, then the measure of the "word as an idea" will be but a measure of the extent of controversy contained in that idea.

Nor can the narrow holding of *Beauharnais* v. *Illinois, supra,* be stretched to fit this case. Whatever vitality *Beauharnais* retains after sixteen years;[24] that case depended on the existence of the statute at issue[25] and does not otherwise import group libel into our jurisprudence.[26] That *Beauharnais* could be relied on by the court below to reinforce the doctrine of "fighting words", indicates how easily

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[23] *Garrison* v. *Louisiana,* 379 U. S. 64, 73 (1964).

[24] With Justices Douglas and Black, petitioners believe that "*Beauharnais* v. *Illinois* . . . should be overruled." *Garrison* v. *Louisiana,* 379 U. S. at 82. Further, "[i]t is instructive to note. . . . that Illinois when it revised its criminal code in 1961, withdrew from it the very statute the Court had ratified in the *Beauharnais* case." Kalven, *op. cit.* at 7. And "[t]he decision has produced no new similar legislation, nor has it produced increased litigation. In total effect, *Beauharnais* exists in a vacuum." 13 Cleve-Mar. L. Rev. 1, 19 (1964). Much has been written criticizing the group libel concept. See Clark, 13 Cleve-Mar. L. Rev., *supra,* at 3; Chafee, Government and Mass Communications, 116-130; Kalven, *supra,* Chap. 1; Cahn, The Predicament of Democratic Man, 135-139 (1961); Reisman, *Democracy and Defamation: Control of Group Libel,* 42 Col. L. Rev. 727, 742-743; Emerson, *supra* at 924.

[25] The State of Maryland has neither group libel nor criminal libel laws.

[26] See Konvitz, Fundamental Liberties of a Free People, 150 (1957).

the group libel concept can be used to curtail legitimate though provocative speech.[27]

It was the danger posed to freedom of speech by the law of libel which *New York Times* v. *Sullivan*, 376 U. S. 254 (1964) and *Garrison* v. *Louisiana, supra*, were designed to deter.[28] *New York Times* placed libel alongside "the various other formulae[29] . . . for the repression of expression [which] can claim no talismanic immunity from constitutional limitations." *Id.* at 264. To erase any seeming inconsistency between the constitutional restriction now applied to libel and the old *Beauharnais* decision, the Court

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[27] This Court in *Garrison* v. *Louisiana, supra*, at 69, observed:

> "Changing mores and the virtual disappearance of criminal libel prosecutions lend support to the observation that '. . . under modern conditions, when the rule of law is generally accepted as a substitute for private physical measures, it can hardly be urged that the maintenance of peace requires a criminal prosecution for private defamation.' Emerson, Toward a General Theory of the First Amendment, 72 Yale L. J. 877, 924 (1963)."

[28] *New York Times* particularly disapproves seditious libel, the source of group libel.

> Prior to the rise of liberalism, the established church was one of the most important supports of the temporal authorities. For this reason protection against defamation extended to the church with which the autocratic regime of the particular country identified itself—Catholic or Protestant—thus also to the beliefs of some of the population, immunized to insult and defamation in the religious sphere. In the United States no one sect has been powerful enough to get control of the state apparatus . . . . On the whole, the result is that American law has not been shaped to protect religious doctrine or religious groups from libelous abuse.

Reisman, op. cit. at 739-740. See also *Beauharnais* v. *Illinois, supra*, at 272 (Justices Black and Douglas dissenting).

[29] Including "insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business." 376 U. S. at 269.

made clear that group libel too is not immune from constitutional scrutiny,[30] for it recalled that in *Beauharnais*, the Court had been "careful to note that it 'retains and exercises authority to nullify action which encroaches on freedom of utterance under the guise of punishing libel.'" *Id.* at 286. Granting *Beauharnais* only the narrowest validity, *New York Times* pointed out that the libel in *Beauharnais* had been "both defamatory of a racial group and 'liable to cause violence and disorder'."[31] *Ibid.* Any use of *Beauharnais* today to buttress the "fighting words" doctrine would signal a retreat from the high standard this Court has since set.

Professor Cahn has demonstrated the danger of even-handed state suppression of offensive speech aimed at groups:

> "Of course, the state should begin by prosecuting anyone who distributed the Hebrew Bible, which in innumerable passages portrays the depravity of Jews . . . . Greek literature would be banned for calling the rest of the world 'barbarians.' Roman authors would suffer because when they were not defaming the Gallic

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[30] To make the point perfectly clear, the Court said in *Garrison* v. *Louisiana*, *supra*, at 68, n. 3, that "nothing in . . . *Beauharnais* forecloses inquiry into whether the use of libel laws, civil or criminal, to impose sanctions upon criticism of the local conduct of public officials transgresses constitutional limitations protecting freedom of expression. Whether the libel law be civil or criminal, it must satisfy relevant constitutional standards."

[31] In light of *New York Times* it is difficult to argue that *Beauharnais* is still good law, for "[i]n the course of the opinion Mr. Justice Brennan discussed criminal libel in a manner casting doubt on the validity of all criminal libel enactments and reinterpreted *Beauharnais*, emphasizing potential violence as the basis of the decision." Franklin, *The Origins and Constitutionality of Limitations on Truth as a Defense in Tort Law*, 16 Stanford L. Rev. 789, 820 (1964).

> and Teutonic tribes they were denigrating the Italians. The Christian writers of the Middle Ages frequently castigated both Jews and Mohammedans. Dante consigned entire vocations and professions to the Inferno. During and after the Reformation, Catholics and Protestants wrote dreadful things about those whom they reciprocally styled 'heretical,' an epithet which when properly understood and aggregated comprised the whole population of Christendom. Shakespeare bluntly affronted the French, the Welsh, the Danes, the Calibans of the underdeveloped countries, and sundry important denizens of the fairy kingdom. Dozens of writers from Sheridan and Dickens to Shaw and Joyce insulted the Irish. And surely any author or statesman who ever championed the emancipation of Negro slaves or the equal treatment of Negro citizens had to be guilty of portraying a specific 'depravity or lack of virtue' in the dominant majority." [32]

So telling a demonstration reinforces Chafee's warning that "all these crimes of injurious words must be kept within very narrow limits if they are not to give excessive opportunities ofr outlawing of heterodox ideas." Chafee, *op. cit.* at 173.

In a heterogeneous society, "the aims and activities of racial and religious groups are matters of genuine public interest" and the "denunciation of racial and religious groups" from time to time is inevitable. Feinberg, "Can Anti-Semitism Be Outlawed," 6 *Contemp. Jewish Record* 619 (1943). But this does not mean that disorder is inevitable, for, as Prof. Konvitz has emphasized, one may not have the

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[32] Cahn, *op. cit.* at 138-139.

right to use "fighting words," but that is an entirely different matter from preventing individuals from making speeches. Konvitz, *op. cit.* at 181. This right to be free from prior restraint does not imply the right "to make a speech which incites to disturbance or riot . . . . Because an act may not be prevented does not mean it may not be subsequently punished." *Ibid.*

Time, Inc. v. *Hill,* 385 U. S. 374 (1967), in its extension of the *New York Times* doctrine to cases in which private individuals are involved in matters "of public interest", discredits the view that sensitive subjects of public interest require prior restraint. "[T]he state has no legitimate interest in protecting any and all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views." *Burstyn, Inc.* v. *Wilson,* 343 U. S. 495, 505 (1952). Nor can the subject of race today enjoy only measured and moderate exchange.

There is both realism and wisdom in Mr. Justice Clark's view that "we cannot expect the judicial process to control such utterances," Clark, *supra* at 3. For if

> " . . . [t]oday a white man stands convicted for protesting in unseemly language against . . . decisions invalidating restrictive covenants. [t]omorrow a Negro will be hailed before a court for denouncing lynch law in heated terms [and] [f]arm laborers in the West who compete with field hands drifting up from Mexico; whites who feel the pressure of orientals; a minority which finds employment going to members of the dominant religious group . . ."[33]

[33] *Beauharnais* v. *Illinois, supra,* at 286 (Mr. Justice Douglas dissenting).

Like the first of the eminent line of prior restraint cases in this Court, this case "raises questions of grave importance transcending the local interests involved." *Near* v. *Minnesota, supra,* at 707. If the decision of the Maryland court is allowed to stand, it will establish a menacing device for prior restriction of speech and will invite its duplication in other jurisdictions. The Court should forbid the intrusion of the power of the injunction where First Amendment rights are to be exercised.

III.

This case is not moot.

Walker v. *City of Birmingham,* 388 U. S. 307 (1967), makes clear that this case is not moot. *Walker* held that "respect for judicial process" requires that an injunction must be obeyed, and that its constitutional validity cannot be tested by violating it. 388 U. S. at 321. Thus the only proper manner of challenging an injunction is by "orderly judicial review." *Id.* at 326.

Petitioners have pursued the path required by *Walker.* If the Court decides that that path is a blind alley leading to a dismissal for mootness, the *Walker* rule and the doctrine of mootness will create a no-man's land where the validity of an injunction cannot be tested either by violating it or by appealing it. Such a rule would emasculate all First Amendment rights and encourage the development of the injunction as a new "scheme of governmental censorship." *Bantam Books* v. *Sullivan, supra,* at 64.

The problem is aggravated when an injunction is issued *ex parte* as in *Walker* and the present case. As the dissent indicated in *Walker*:

> "[The] *ex parte* temporary injunction has a long and odious history in this country, and its susceptibility to misuse is all too apparent from the facts of the case . . . . The labor injunction fell into disrepute largely because it was abused in precisely the same way that the injunctive power was abused in this case. Judges who were not sympathetic to the union cause commonly issued, without notice or hearing, broad restraining orders . . . . The injunctions might later be dissolved, but in the meantime strikes would be crippled because the occasion on which concerted activity might have been effective had passed. Such injunctions, so long discredited as weapons against concerted labor activity, have now been given new life by this Court as weapons against the exercise of First Amendment freedoms." 388 U. S. at 330-331 (Warren, *C.J.*, dissenting).

The abuse of *ex parte* orders in First Amendment cases can be corrected only by effective review. Thus it is crucial that the right to appeal from such orders be clearly protected. Too often *ex parte* orders are obtained from local courts by local authorities antagonistic to the views of persons claiming First Amendment rights. See *Thomas* v. *Collins, supra.* The doctrine of mootness would deny First Amendment claimants judicial review, a result which would simultaneously deny them First Amendment rights.

This Court has often held that "state procedural requirements which are not strictly or regularly followed cannot deprive us of the right of review." *Barr* v. *City of Columbia,* 378 U. S. 146, 149 (1964). See also *NAACP* v. *Alabama ex rel. Flowers,* 377 U. S. 288 (1964); *Wright* v.

Georgia, 373 U. S. 284 (1963). Nor can an artificial procedural rule be applied which would lead to the same result. See *Burstyn* v. *Wilson, supra; Bantam Books* v. *Sullivan, supra.*

Furthermore, the Court has established a limited role for the doctrine of mootness. A case becomes moot "[where] by an act of the parties, or a subsequent law, the existing controversy has come to an end." *United States* v. *Alaska S.S. Co.,* 253 U. S. 113, 116 (1920). In other words, a case becomes moot where a distinct change of position by one of the parties or where a change required by law has ended the controversy giving rise to the suit. Thus when Congress modified the bill of lading issued by the Interstate Commerce Commission, which was the subject of the suit in the *Alaska S.S. Co.* case, *supra,* the controversy over the original bill of lading was concluded. When a labor union during a strike against a local gas company objected to the invocation of a state law permitting the seizure by the Governor of a public utility, the case became moot after the labor union ended the strike and the workers returned to their jobs. *Oil Workers Union* v. *Missouri,* 361 U. S. 363 (1960). When a woman sought a building permit which was initially refused and a *mandamus* action was initiated to require its issuance, the case became moot when the authorities subsequently issued the permit. *Brownlow* v. *Schwartz,* 261 U. S. 216 (1923). In each of these cases the parties or outside authority took steps which effectively ended the original controversy. The parties, at the time their appeals were to be heard, had nothing to argue about.

Similarly the passage of time may end a dispute, and a case may become moot for that reason. When a child claiming rights under a child labor statute became of age,

the law "cannot affect him further" and his case for an injunction must fall. *Atherton Mills* v. *Johnston*, 259 U. S. 13, 15 (1922). An action brought to contest the revocation of a license became moot when the license would have expired under its original terms. *Security Mutual Life Co.* v. *Prewitt*, 200 U. S. 446 (1906). In both of these instances the passage of time had affected the parties' legal status and a distinct change in their position, although not voluntarily made, had taken place.

Thus, in the present case, if petitioner National States Rights Party had been disbanded, or if a new law had altered the legal position of the parties, this case would be moot. But neither has occurred. The situation underlying the dispute is self-perpetuating, for petitioners could not today express their political views as they did in Princess Anne on August 6, 1967.[24] As one commentator notes, "If the situation is self-perpetuating the parties are entitled to an adjudication which will apply to the renewed phase of the controversy in existence at the date of decision." Diamond, *Federal Jurisdiction to Decide Moot Cases*, 94 U. of Pa. L. Rev. 125, 135-36 (1946).

This Court held in *Motor Coach Employers* v. *Missouri*, 374 U. S. 74 (1963) that a case challenging the Governor's seizure of a public transit company did not become moot when the Governor returned the company to its owner. The underlying labor dispute had not been resolved (unlike the situation in *Oil Workers Union, supra*) and there existed "in the . . . case not merely the speculative possibility of invocation of the King-Thompson Act in some future labor dispute, but the presence of an existing un-

[24] See Petition for a Writ of Certiorari, App. pp. 20a-23a.

resolved dispute which continues subject to all the provisions of the Act." 374 U. S. at 78.

In *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 433 (1911), the Interstate Commerce Commission had ordered the defendant to cease giving preference to a specific company for two years. The order expired before the Supreme Court could hear the case. The claim of mootness was denied by the Court:

> "The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and *their consideration ought not to be, as they might be, defeated by short term orders, capable of repetition, yet evading review*, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress." 219 U. S. at 515 (emphasis added).

See also *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 308 (1897); *Porter* v. *Lee*, 328 U. S. 246 (1946).

Similarly, in this case, the dispute is unresolved and continuing, and the right of petitioners to hold public meetings "ought not to be, as [it] might be, defeated by short term orders, capable of repetition, yet evading review." [35] Local authorities cannot be permitted to seek short term orders against public meetings, secure injunc-

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[35] Like the censorship procedure disapproved in *Freedman* v. *Maryland, supra*, at 60, 61, an injunction assures that speech is "prohibited pending judicial review, however protracted" and involves the speakers in litigation which may be "unduly expensive or protracted" . . . with possibly "the most propitious opportunity" for speaking long past.

tions for as long as ten months, as here, and then evade review in the Supreme Court by claiming a case is moot because the injunction has expired. State officials could thus evade any authoritative interpretation of vital First Amendment questions by this Court through the simple expedient of securing injunctions for a specific period which will expire before review can be secured here.

A temporary injunction, like the censor's determination in *Freedman* v. *Maryland, supra,* at 58, "may in practice be final." In the case at bar, petitioners are effectively and permanently barred from expressing their provocative views. The state has thus "adopt[ed] . . . procedures without regard to the possible consequences for constitutionally protected speech." *Marcus* v. *Property Search Warrant,* 367 U. S. 717, 731 (1961). Thus it is the procedure itself which must be disapproved, quite apart from technical mootness questions. As this Court has said before, "it is enough to say that in passing upon constitutional questions the Court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect." *Near* v. *Minnesota, supra,* at 708.

Like the statute condemned in *Near,* an injunction,

> ". . . not only operates to suppress the offending [speech] but to put the [speaker] under an effective censorship . . . Whether he would be permitted again to publish matters deemed to be derogatory . . . would depend upon the court's ruling." 286 U. S. at 712.

The injunctions at issue here have thus become a convenient device now available to state officials who wish to avoid this Court's decisions forbidding prior restraint. In the past, the Court has not refused "to look through form to the sub-

stance and recognize . . . censorship." *Bantam Books* v. *Sullivan, supra,* at 67. Vigilance requires explicit disavowal of the injunction in this case.

CONCLUSION

For all the reasons stated above, the injunctions should be declared unconstitutional.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 6

JOSEPH CARROLL, RICHARD NORTON, J. B. STONER, CHARLES LYNCH, ROBERT LYONS, WILLIAM BRAILSFORD, and the NATIONAL STATES RIGHTS PARTY,

Petitioners,

—v.—

THE PRESIDENT and COMMISSIONERS OF PRINCESS ANNE COUNTY, COMMISSIONERS OF SOMERSET COUNTY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE COMMONWEALTH OF MARYLAND

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	PAGE
1. Pre-trial	2
2. Trial	6
3. Appeal	8
CONCLUSION	11
APPENDIX	
Ordinance 22B (46)-1	1a
Letter of William H. Zinman to Edgar Jones	3a
Letter of Edgar Jones to William H. Zinman	4a
Letter of Clerk of Court of Appeals of Maryland to William H. Zinman	6a
Motion to Advance Case for Hearing and Argument	7a
Order of Court	9a
Letter of William H. Zinman to Clerk of Circuit Court	10a
Letter of William H. Zinman to the Court of Appeals of Maryland	12a
Letter of Clerk of Court of Appeals of Maryland to William H. Zinman	13a

PAGE

TABLE OF AUTHORITIES

United States Constitution, First Amendment 1, 2, 6, 9

Maryland Rules:

Rule BB72 2-3

Rule 845(c) 8

Princess Anne County Ordinance 22B(46)-1 2

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REPLY BRIEF FOR PETITIONERS

Respondents at pp. 5-7 of their Brief have urged that this case is moot because, they contend, petitioners could have expedited their case under Maryland procedure but did not do so. In fact, petitioners were concerned throughout these proceedings with advancing this case in order to remove as quickly as possible the restrictions that had been placed upon the exercise of their First Amendment rights. This Reply Brief is submitted pursuant to Rule 41(3) to show what steps petitioners in fact took.

It should be noted that petitioners have previously argued that this case is not moot because it has created a menacing device for prior restraint constituting a con-

tinuing "chilling effect" on speech that must be disapproved under the First Amendment. Thus, the *ex parte* injunction, having been expressly approved by the court below, remains available to officials for advance curtailment of unpopular speech.[1] Further, petitioners have shown that county officials are continuing to impose prior restraints upon speech by virtue of their refusal to issue petitioners a permit[2] to conduct a rally similar to that originally held in the county. In addition there are other arguments that this case is not moot in response to the contentions raised in the Brief for Respondents.

1. *Pre-trial*

First, respondents argue that petitioners could have obtained a hearing on two days' notice pursuant to Maryland Rule BB72[3] and thus imply that within two days of

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[1] The *ex parte* injunction is of course the most extraordinary remedy found in the law and one that is universally used sparingly, even in non-speech cases. In Maryland such injunctions are hardly ever granted as a matter of practice. In cases where such relief is requested in Maryland, the local practice is for the judge to summon all counsel, and in the absence of counsel, the parties themselves, before any such order is signed. Where questions of fact or law arise the matter is set down for immediate hearing before an order is issued. Of course an *ex parte* injunction may be issued without these safeguards, but as a matter of local practice they are almost always followed. None of them were employed in this case before the *ex parte* injunction was issued.

[2] Only after petitioners' rally in Princess Anne on August 6th, did the county enact an ordinance requiring a permit on August 24th. The ordinance, 22B(46)-1, containing no standards for the exercise of administrative discretion, was enacted as an emergency provision in order to render it effective immediately. It appears in the Appendix at pp. 1a-2a.

[3] Rule BB72. Ex Parte Injunction

a. When May Be Granted.

Any ex parte injunction shall not be granted unless it appears from specific facts shown by affidavit, or a verified pleading with

the August 7, 1966 *ex parte* Temporary Order, its validity could have been settled at the trial court level. In fact petitioners could not have obtained a hearing any earlier than they did. Confusion arose in the first place because of the county's failure to serve petitioners William Brailsford, Robert Lyons, Richard Norton, and J. B. Stoner with a copy of the temporary order (R. 76). Nor was the National States Rights Party as such ever served (R. 76-77). When the parties were able to finally secure counsel, he protested to the court concerning the county's failure to serve some of the petitioners (R. 76-77), a serious defect when a court has issued an *ex parte* injunction of any sort.

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or without supporting affidavit or sworn testimony, that immediate, substantial and irreparable injury will result to the applicant before an adversary hearing can be had. The judge to whom application is made for an ex parte injunction may, in his discretion, communicate informally with the person against whom the injunction is sought, or his attorney, prior to taking action upon the application.

b. Service—Contents—Expiration—Extension.

An ex parte injunction shall be served forthwith on the adverse party by the quickest possible means; it shall give the adverse party leave to move for a hearing on not more than two days' notice; and it shall expire by its terms within such time after entry as the court may fix. Such time shall not exceed ten days, in case of a resident, and shall not exceed thirty-five days, in case of a nonresident. The court may within the time so fixed, for good cause shown, extend such time for a like period or for a longer period if the party against whom the injunction is directed consents.

c. Motion for Relief—Early Hearing.

A motion for relief against an ex parte injunction shall be set down for hearing at the earliest possible time.

d. Hearing—Burden on Applicant—Dissolution.

At the hearing, the applicant who obtained the ex parte injunction shall have the burden of showing the necessity or propriety of continuing the injunction, and if he does not, the court shall dissolve the injunction.

The matter of service was further confused since petitioners were unable to secure counsel immediately because of the unpopularity of their cause.[4] Petitioners approached several attorneys who refused to become associated with the case. Failing their attempt to hire private counsel after searching for nearly a week, they made application to the local affiliate of the American Civil Liberties Union in Baltimore.[5] The rules of the Maryland affiliate require convening the legal panel to decide if a case should be taken by the ACLU. An emergency meeting of the legal panel held on August 12th voted to assume the case.

The next day, August 13th, William H. Zinman and Garrett Power were assigned as ACLU counsel for petitioners. Prompt contact was made with one of petitioners on Sunday and Monday, August 14th and 15th, and counsel filed an answer August 15th, requesting a recision of the Temporary Order of August 7th (R. 9). This pleading was received by the Circuit Court the next day, August 16th.

It is clear that with inadequate service of process and difficulty in securing counsel, expedition of this case was beyond petitioners' control until counsel was assigned on August 13th. From the time of their assignment, voluntary ACLU counsel—though retained without fee—lost no time and went further in doing what they could to bring the matter to hearing and final resolution.

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[4] The details concerning petitioners' difficulty in obtaining counsel are found in the affidavit of Joseph Carroll, which has been filed with the Clerk of this Court and served on respondents.

[5] For details concerning the circumstances and timing of involvement of ACLU counsel in this case, see affidavit of William H. Zinman, which has been filed with the Clerk of this Court and served on respondents.

In order to further expedite the case, counsel for petitioners, who were unfamiliar with local practice in Somerset County, attempted to secure help from local Somerset County attorneys but were unable to do so. On August 15, 1966, the day petitioners sent their answer to the trial court, counsel wrote to the President of the Somerset County Bar Association, who was special counsel for the prosecution at trial (R. 25), requesting that local counsel be assigned by the Bar Association to assist ACLU counsel.[6] The purpose for the request was twofold.[7] First it was felt that local counsel could assist in expediting the case pursuant to the intricacies, rules and customs of local practice, with which he but not ACLU counsel, would be familiar. Further, since ACLU counsel were about 150 miles away in the city of Baltimore, requiring an entire day to reach and return from Somerset County, it was felt that local counsel was necessary if the matter was to be resolved with the least delay. In addition, the extraordinary nature of the proceeding—a hearing on an *ex parte* injunction—was felt to require consultation with counsel familiar with local practice.

The reply of the President of the Somerset County Bar Association is itself an indication of why it would be unfair to hold petitioners responsible for whatever delay occurred in this case being heard. The president advised counsel by letter of August 16, 1966[8] that "our small association has never taken any action on the suggestion that

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[6] App., *infra*, p. 3a, Letter of August 15, 1966 to Edgar Jones, Esq. from William H. Zinman.

[7] See affidavit of William Zinman, *supra*.

[8] App., *infra*, pp. 4a-5a, Letter of August 16, 1966 to William Harris Zinman, Esq. from Edgar Jones.

attorneys be assigned from the association to participate in 'unpopular causes'", and that local bar association members would prefer to avoid appointments even to criminal cases. The letter noted that four of the county's seven attorneys were representing the county in this case, leaving only three others. One of these "I am sure would not be available," as it was expected was the case with the other law firm, since "one of these partners is running for office and would not want to get on what possibly is the unpopular side."*

The picture that emerges is the same one which petitioners found wherever they searched for representation in this matter. Their cause was so unpopular they could not secure representation. Where First Amendment rights have been directly infringed through the issuance of an *ex parte* injunction, petitioners should not be estopped from testing the validity of that injunction because they could not find lawyers who would risk associating themselves with petitioners' cause. This is especially so where the "chilling effect" of the *ex parte* injunction device remains because it has been judicially approved as available in such cases and where, as here, petitioners cannot today get a permit to speak without accepting as a condition the censorship of their remarks.

2. *Trial*

The hearing on the *ex parte* injunction was held on August 17, 1966, the date scheduled in the Temporary Order. During the hearing, the Court declined the suggestion that it

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* See Appendix, Petition for a Writ of Certiorari to the Court of Appeals in Maryland in this case, Letter of July 25, 1967 to Joseph J. Carroll from Alexander G. Jones, Esq., pp. 22a-23a.

make an immediate decision and postpone the written opinion to follow upon completion of the typing of the record (R. 79). At the conclusion of the hearing and off-the-record, Judge Travers, one of two judges who heard this case, asked one of petitioners' attorneys if he desired a written opinion.[10] When told that a written opinion was desired, Judge Travers informed counsel that in that case decision would have to be postponed until after the court reporter had finished the transcript, a task the Judge warned, which might take considerable time because of other cases on which the court reporter was then working. Counsel for petitioners advised that he would appreciate an immediate ruling and would be satisfied if the court would file its opinion at a later date. The court however did not wish to rule without aid of the record, as had earlier been indicated (R. 79). Given the inevitable delay to be caused by this procedure, counsel suggested that the court dissolve the injunction until it had had the time to write an opinion upon receipt of the transcript, but the court declined this suggestion. The court thereupon announced that the temporary injunction would remain in effect (R. 80).

The final decision was not issued until August 30, 1968, twenty-three days after the *ex parte* temporary injunction had been ordered. However, counsel for petitioners had telephoned the court between the 17th and the 25th of August to suggest the need for a prompt decision.[11] Under the circumstances, counsel had done all that he could to get a prompt determination. The record clearly does not support

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[10] See affidavit of William Zinman, *supra*, for details of this exchange.

[11] Affidavit of William H. Zinman, *supra*.

respondents' contention that petitioners "did nothing to bring this matter to a hearing more promptly." [12]

3. *Appeal*

Similarly, respondents erroneously contend that there is no showing that petitioners moved to expedite the appeal and specifically that no motion was made under Maryland Rule 845(c)[13] to set the appeal ahead on the docket of the Maryland Court of Appeals. This contention is in plain contradiction of the facts.

On March 8, 1967 petitioners filed in the Maryland Court of Appeals and served on respondents a Motion to Advance Case for Hearing and Argument in the Court of Appeals of Maryland in conformity with Rule 845(c), cited by respondents. Moreover on March 16, Chief Judge Hall Hammond in fact granted the motion to advance oral argument, and the Clerk's letter of that date informed petitioners that the advanced date of argument would fall "between April 3rd and 14th." [14] Though inadvertently not included in the record by the Clerk of the Maryland Court of Appeals, certified copies of the motion and order have now been lodged with the Clerk of this Court and are printed in the Appendix of this Brief (App., *infra,* pp. 7a-8a).

Petitioners' motion to advance argument demonstrates that they cannot be held responsible for any delays that

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[12] Brief for respondents, p. 6.

[13] Rule 845(c) provides:

> A case may be argued in advance of its regular order on the docket only upon motion and for cause shown unless, upon its own motion, this Court advances the case for argument.

[14] App., *infra,* p. 6a, Letter of March 16, 1967 from J. Lloyd Young to William H. Zinman, Esq.

resulted on appeal in this matter. The motion recited that petitioners had been enjoined from exercising their First Amendment rights anywhere in the county and concluded that, "Since the Appellants are presently substantially prohibited from exercising all of their First Amendment rights within the confines of the entire county, it is urgent that this Court grant them a prompt and immediate hearing."

Nor does petitioners' Motion to Lengthen Time for Transmission of Record show otherwise (R. 23-24). As respondents note, petitioners had originally filed a Motion to Shorten for Transmission of Record contending that the injunction "constitutes patent violation of [petitioners'] First Amendment rights . . . and that every day that this interlocutory injunction remains in force and effect, the First Amendment rights of your Petitioners shall continue to be restricted" (R. 22). At the time of this latter motion, counsel were negotiating to have an agreed stipulation of facts replace the usual typed transcript of the proceedings, inasmuch as there appeared to be no dispute concerning the facts, and counsel informed the Clerk of the Circuit Court of these negotiations.[15] Counsel for petitioners prepared the stipulation, but counsel for respondents rejected the stipulation without himself offering one. He then required that the full transcript to be prepared, and petitioners were thereby forced to obtain an extension in which to order the transcript.

Petitioners' efforts to get a speedy decision went further. On May 16, 1967 following oral argument counsel

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[15] App., *infra*, p. 9a, Letter of October 6, 1966 to I. Theodore Phoebus from William H. Zinman.

wrote the Court of Appeals requesting a "decision in this case as soon as possible" since "a prompt decision by the highest Court on the questions presented by the appeal prior to their becoming moot, would be helpful in clarifying a situation which now appears very uncertain."[16] Counsel informed the Court that the need for a prompt decision was demonstrated by the fact that since the injunction was issued in this case, petitioners "have been systematically prohibited from speaking in many counties of the State including Baltimore City [*sic*] . . . and at the present time their request to engage in public debates has been turned down by several counties." By letter of May 18, 1967 counsel was informed that the case was under consideration by the court.[17] Decision was rendered June 7, 1967.

Efforts to advance this matter through the courts were diligently pursued. However, this Court may take judicial notice that no effort on either side could have expedited this case so rapidly that it could have reached this Court and been resolved before the ten-month injunction ran. This is especially so in the case of the ten-day *ex parte* temporary injunction, which was explicitly approved below. Arguments based on alleged mootness should not be allowed to obscure the continuing effect of the *ex parte* injunction as a device now available under Maryland law to effect prior censorship of speech.

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[16] App., *infra*, p. 10a, Letter May 16, 1967 to Court of Appeals, c/o Mr. James H. Norris, Jr. from William H. Zinman.

[17] App., *infra*, p. 11a, Letter of May 18, 1967 to William Harris Zinman, Esq. from J. Lloyd Young.

CONCLUSION

For all the reasons stated above as well as for the reasons discussed in petitioners' prior briefs in this Court, this case is not moot.

Respectfully submitted,

MELVIN L. WULF
ELEANOR HOLMES NORTON
156 Fifth Avenue
New York, N. Y. 10010

WILLIAM H. ZINMAN
500 Equitable Building
Baltimore 2, Maryland

LEON FRIEDMAN
70 West 40th Street
New York, N. Y. 10018

Attorneys for Petitioners

October, 1968

APPENDIX

Ordinance 22B (46) -1

AN EMERGENCY ORDINANCE REGULATING THE USE OF ANY DEVICE OR APPARATUS FOR THE AMPLIFICATION OF THE HUMAN VOICE OR SOUNDS FROM ANY RADIO, TAPE, FILM, PHONOGRAPH, OR OTHER SOUND MAKING OR SOUND TRANSMITTING DEVICE FOR COMMERCIAL, POLITICAL OR SOCIAL PURPOSES IN THE TOWN OF PRINCESS ANNE.

WHEREAS, The President and Commissioners of Princess Anne have determined that the unrestricted use of devices or apparatus for the amplification of the human voice and other sounds has caused annoyance and disturbance to the residents of said town and accordingly such use should be regulated and controlled to insure the peace and tranquility of the residents of said town, and,

WHEREAS, this ordinance concerns itself with a situation deemed by the Commissioners to affect the general health, safety, and welfare of the inhabitants of Princess Anne, this ordinance is hereby declared by the Commissioners to be an emergency ordinance within the meaning of Section 163 of the Somerset County Code, 1963 Edition.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE:

Section 1. No person or persons, firm, association, or corporation shall use or operate or cause to be used or operated within the town limits of Princess Anne any device or apparatus for the amplification of the human voice or sounds from any radio, tape, film, phonograph, or other sound making or sound transmitting device for commercial, political or social purposes.

Section 2. For public gatherings or occasions of special public interest or on such occasions or for such use as

The President and Commissioners may deem proper, the said The President and Commissioners may issue a permit for the use of such sound making or sound reproducing devices for limited periods of time.

Section 3. Nothing in this ordinance shall be construed to abridge or curtail the right of newspapers to announce, orally or otherwise, details, results or contemporaneous descriptions of important news or sports events.

Section 4. Nothing in this ordinance shall be construed to abridge or curtail the use of sound making or sound amplification devices for emergency purposes by duly constituted public agencies, specifically including but not limited to police and fire department personnel, in the performance of their official duties.

Section 5. Any person or persons, firm, association, or corporation violating this ordinance shall upon conviction thereof be fined not less than $10.00 nor more than $100.00 for each such violation.

Section 6. This ordinance shall be published in accordance with the provisions of Section 163 of the Somerset County Code, 1963 Edition.

Section 7. This ordinance is hereby designated an emergency ordinance as defined in Section 163 of the Somerset County Code, 1963 Edition, and accordingly all be effective on the 24th day of August, 1966.

THE PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE

/s/ JAMES E. LAUCHNER
James E. Lauchner, *Pres.*
(Two Names Illegible)

/s/ JAMES F. POWELL
James F. Powell,
Town Mgr.

Letter of William H. Zinman to Edgar Jones

(Letterhead of William Harris Zinman,
Baltimore 2, Maryland)

August 15, 1966

Edgar Jones, Esquire
Princess Anne
Somerset County, Maryland

Re: *The President and Commissioners of Princess Anne* vs. *Joseph Carroll, et al.*

Dear Mr. Jones:

Enclosed please find a copy of our answer to the Petition for Injunctive Relief in the above-entitled case.

Be advised that the Civil Liberties Union, at the request of the Defendants, has assigned Mr. Garrett Power, a professor of law at the University of Maryland, and I to the defense of this case.

Due to the nature of this matter, I should like to formally request that local counsel also be assigned to assist us by the Somerset County Bar Association. This request is based upon our contention that everyone in need is entitled to a lawyer without regard to race or creed.

Yours truly,

/s/ William H. Zinman
William H. Zinman

WHZ/yk
Enclosure:

Letter of Edgar Jones to William H. Zinman

(Letterhead of Jones & Jones, Princess Anne, Md. 21853)

August 16, 1966

William Harris Zinman, Esq.
500 Equitable Building
Baltimore 2, Maryland

Re: *The President and Commissioners of Princess Anne* vs. *Joseph Carroll, et al.*

Dear Mr. Zinman:

This will acknowledge receipt of your letter of yesterday in which you formally requested local counsel be assigned to assist you in the defense of the above entitled case. I am sorry to advise that our small association has never taken any action on the suggestion that attorneys be assigned from the association to participate in "unpopular causes". This is perhaps due to the fact that there are only seven active members in our association. So far as I can remember there has never been any occasion in this County for the assignment of an attorney in an unpopular cause. Of course, in criminal cases the court does make these appointments, many of which we would all like to get out of.

In the present instance three of the active attorneys are involved on the other side in this case, the State's attorney is, of course, unavailable for this sort of work, Simpkins and Simpkins are very likely unavailable as one of these partners is running for office and would not want to get on

what possibly is the unpopular side and this only leaves one attorney whose residence is Crisfield and I am sure would not be available. I am sorry that we cannot comply with your request for the reasons above set forth.

Very truly yours,

/s/ Edgar A. Jones
President
Somerset County Bar Association

EAJ:ep

Letter of Clerk of Court of Appeals of Maryland to William H. Zinman

(Letterhead of Court of Appeals, Annapolis, Md.)

March 16, 1967

William H. Zinman, Esq.
Attorney at Law
500 Equitable Building
Baltimore, Maryland 21202

Dear Mr. Zinman:

The Court has considered your motion to advance for argument the case of *Joseph Carroll, et al. vs. President and Commissioners of Princess Anne, et al.*, No. 525, September Term, 1966, and, for your information, said motion was granted and an Order of Court filed today. A copy of the Order is enclosed.

The case will be assigned for argument between April 3rd and 14th; you will be notified of the exact day later.

A card is enclosed herewith and we ask that you note thereon your estimated time for argument, and return it to us promptly.

Very truly yours,

/s/ J. Lloyd Young
Clerk

JLY/ojr
Enclosures
cc: Alexander G. Jones, Esq.
Thomas S. Simpkins, Esq.

Motion to Advance Case for Hearing and Argument

IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM 1966

No. 525

JOSEPH CARROLL, ET AL.,

Appellants,

—VS.—

PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, ET AL.,

Appellees.

Now comes the Appellants, by their Attorney, William H. Zinman, and moves that this Court advance this case for immediate hearing and argument for the following reasons:

1. That this is an Appeal from a ten (10) month interlocutory order of the Circuit Court of Somerset County, rendered on August 30, 1966, enjoining all of the Appellants from speaking, assembling, petitioning the government for redress and/or making any public utterance, speech or communication within the confines of Somerset County for the above stated period of time.

2. That after the Appellants filed their Brief with this Court on January 10, 1967, they agreed to permit the Appellees to extend their time for filing their Brief with this Court from February 10, 1967, to March 10, 1967, on

condition that they would agree to a prompt advancement of argument and hearing of this case. Since the Appellants are presently substantially prohibited from exercising all of their first amendment rights within the confines of the entire county, it is urgent that this Court grant them a prompt and immediate hearing.

WHEREFORE, the Appellants respectfully request that this Court grant them a prompt and immediate hearing; and that they be granted such other and further relief as their cause may seem to indicate.

WILLIAM H. ZINMAN
Attorney for Appellants
500 Equitable Building
Baltimore, Maryland 21202
SA 7-6151

Order of Court

IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM 1966

No. 525

JOSEPH CARROLL, ET AL.,

Appellants,

—VS.—

PRESIDENT AND COMMISSIONERS OF PRINCESS ANNE, ET AL.,

Appellees.

IT IS ORDERED this 16th day of March, 1967, by the Court of Appeals of Maryland, that the above-entitled case be advanced for argument and hearing scheduled for the April Session.

/s/ HALL HAMMOND
Chief Judge

Letter of Wlliam H. Zinman to Clerk of Circuit Court

October 6, 1966

Clerk of the Circuit Court
I. Theodore Phoebus
Princess Anne
Somerset County, Maryland

Re: *The President and Commissioners of Princess Anne* vs. *Joseph Carroll, et al.*
Chancery Number—8338

Dear Mr. Phoebus:

Enclosed please find my personal check in the amount of $102.75 for the payment of costs in this case and an additional check of $20.00 for the Court of Appeals, which you are to forward.

I am presently negotiating with counsel for the town concerning an agreed Stipulation of Facts in substitution of the trial record. Consequently, I may not need any part of the record to be written up by Mr. Baker. I shall contact you in reference to that within a day or so. If there is anything else which remains to be done, please contact me.

Thanking you for your cooperation in this matter, I am

Very truly yours,

William H. Zinman

WHZ/yk
Enclosure:

Letter of William H. Zinman to the Court of Appeals of Maryland

May 16, 1967

Court of Appeals
c/o Mr. James H. Norris, Jr.
The Honorable Judges of the Court of Appeals
Annapolis, Maryland

RE: *Carroll et al.* vs. *Princess Anne, et al., Appeal: 535*

Dear Sirs:

The above-entitled case involves an appeal from a ten month Interlocutory Injunction prohibiting the Appellants from engaging in any political activity in Princess Anne County. Due to the serious nature of the case, it was advanced for argument by order of this court and set in for argument on April 5, 1967, at which time the case was heard on oral argument before five judges of this court.

Although it is not part of the record, the Appellants have been systematically prohibited from speaking in many counties of this State including Baltimore City on and after the Summer of 1966, and at the present time their request to engage in public debate has been turned down by several counties. Consequently, a prompt decision by the highest State Court on the questions presented by the appeal prior to their becoming moot, would be helpful in clarifying a situation which now appears very uncertain.

Accordingly, I should very much appreciate a decision in this case as soon as possible.

Sincerely yours,

William H. Zinman

WHZ/yk
cc: Edgar A. Jones, Esquire
cc: Lloyd L. Simpkins

Letter of Clerk of Court of Appeals of Maryland to William H. Zinman

(Letterhead of Court of Appeals of Maryland, Annapolis, Md.)

May 18, 1967

William Harris Zinman, Esq.
Attorney at Law
500 Equitable Building
Baltimore, Maryland 21202

Dear Mr. Zinman:

Replying to your letter of May 16, 1967, we wish to advise that the Court has under consideration the appeal in the case of *Joseph Carroll, et al.* vs. *Commissoners of Princess Anne County, et al.*, No. 525, September Term, 1966.

Very truly yours,

/s/ J. Lloyd Young
Clerk

JLY/ojr
cc: Edgar A. Jones, Esq.